



Hyattsville City Council Agenda Item Report

Meeting Date:
Submitted by: Patrick Paschall, W3
Submitting Department: Legislative
Item Type: Ordinance
Agenda Section:

SUBJECT

An Ordinance Establishing Hyattsville as a Sanctuary City and Prohibiting Resident Registries based on Protected Classes

Motion #

Recommendation:

I move that the Mayor and Council adopt Ordinance 2017-XX, an ordinance establishing Hyattsville as a Sanctuary City and prohibiting City participation in any registry of residents based on protected classes.

Sponsor(s):

Paschall, Hollingsworth, Wright, Warner, Ward, Solomon, Lawrence, Haba, Croslin

ATTACHMENTS

[Hyattsville Sanctuary City Ordinance.docx](#)

[Sanctuary City EO 1-25-17.pdf](#)

[8 USC 1373.pdf](#)

Summary Background:

President Trump has signed an Executive Order targeting local jurisdictions that refuse to expend local resources enforcing federal immigration laws with a threat that localities who refuse to comply with 8 U.S.C. 1373 will be ineligible for most federal funding. President Trump has also called for the creation of a Muslim Registry, which would unconstitutionally target residents in the United States, citizens and non-citizens alike, based on their religious belief.

The City of Hyattsville has a longstanding history of non-engagement in immigration issues - our Police Department has a longstanding practice of not inquiring about a person's immigration status, and when an officer becomes aware that a person is undocumented, our practice is not to proactively report that person's immigration status to federal authorities. Further, the City's current practice is not to expend City resources checking people against federal databases to inquire about whether the person is lawfully present.

These policies are key to public trust in our government, and especially police, institutions. Hyattsville has established a community-based policing model whereby officers are part of the fabric of our community. To utilize local law enforcement to target minority populations in Hyattsville for federal immigration enforcement would undermine our City's efforts to ensure public trust in our local law enforcement agencies.

This Ordinance will establish Hyattsville as a Sanctuary City, codifying the longstanding practices of the City of Hyattsville and clarifying that City staff and agents may not expend City resources, including staff time, on federal immigration enforcement activity. Moreover, this ordinance would prohibit the City from entering into a funding arrangement with the federal government that would deputize local law enforcement with federal immigration

powers, or otherwise work to act as a local Deportation Force for the federal government. By refusing to enter into funding arrangements with the federal government regarding federal immigration enforcement and by prohibiting the use of City resources toward this endeavor, this Ordinance would prevent local taxpayer dollars from being used for federal immigration enforcement. This Ordinance would allow for local law enforcement to release detainees to immigration enforcement authorities only if they produce an active criminal warrant for the person's arrest. This Ordinance will also prohibit the City from participating in any sort of registry of residents based on a protected class such as religion or race.

Next Steps:

Council to review and discuss, schedule a public hearing, and vote on the measure. Once passed, Staff will be required to undertake a review of existing forms to remove inquiries about immigration status, if any such forms request that information (unless the inquiry about immigration status is required by state or federal law).

Fiscal Impact:

TBD

City Administrator Comments:

TBD

Community Engagement:

A public hearing should be held on this topic to engage the local community and solicit feedback.

Strategic Goals:

Goal 5

Legal Review Required?

Legal Review Needed

An Ordinance Establishing Hyattsville as a Sanctuary City and Prohibiting Resident Registries based on Protected Classes

BE IT ORDAINED BY THE HYATTSVILLE CITY COUNCIL:

Section 1. Definitions.

The following terms wherever used in this chapter shall have the following meanings unless a different meaning appears from the context:

“Administrative warrant” means an immigration warrant of arrest, order to detain or release aliens, notice of custody determination, notice to appear, removal order, warrant of removal, or any other document, issued by ICE that can form the basis for an individual’s arrest or detention for a civil immigration enforcement purpose. This definition does not include any criminal warrants issued upon a judicial determination of probable cause and in compliance with the requirements of the Fourth Amendment to the U.S. Constitution and Article 26 of the Maryland Declaration of Rights.

“Agency” means every City department, agency, division, commission, council, committee, board, other body, or person established by authority of an ordinance, executive order, or City Council order.

“Agent” means any person employed by or acting on behalf of an agency.

“Citizenship or immigration status” means all matters regarding questions of citizenship of the United States or any other country, the authority to reside in or otherwise be present in the United States, the time and manner of a person’s entry into the United States, or any other immigration matter enforced by the Department of Homeland Security or successor or other federal agency charged with the enforcement of civil immigration laws.

“Civil immigration enforcement operation” means any operation that has as one of its objectives the identification or apprehension of a person or persons in order to subject them to civil immigration detention, removal proceedings and/or removal from the United States.

“Coerce” means to use express or implied threats towards a person or any family member of a person that attempts to put the person in immediate fear of the consequences in order to compel that person to act against his or her will.

“Contact information” means home address, work address, telephone number, electronic mail address, social media contact information, or any other means of contacting an individual.

“Eligible for release from custody” means that the person may be released from custody because one of the following conditions has occurred:

- (1) All criminal charges against the person have been dropped or dismissed.

- (2) The person has been acquitted of all criminal charges filed against him or her.
- (3) The person has served all the time required for his or her sentence.
- (4) The person has posted a bond.
- (5) The person is otherwise eligible for release under state or local law, or local policy.

“Family member” means a person’s (i) mother, father, spouse, brother or sister (including blood, step or half), son or daughter (including blood, step or half), father-in-law, mother-in-law, daughter-in-law, son-in-law, brother-in-law, sister-in-law, grandparent or grandchild; or (ii) court-appointed legal guardian or a person for whom the person is a court-appointed legal guardian; or (iii) domestic partner or the domestic partner's mother, father, brother, sister (including blood, step, or half), son or daughter (including blood, step or half).

“ICE” means the United States Immigration and Customs Enforcement Agency and shall include any successor agency charged with the enforcement of civil immigration laws.

“Immigration detainer” means a request by ICE to a federal, state, or local law enforcement agency that requests that the law enforcement agency provide notice of release or maintain custody of an individual based on an alleged violation of a civil immigration law, including detainers issued pursuant to sections 236 or 287 of the Immigration and Nationality Act or 287.7 or 236.1 of Title 8 of the Code of Federal Regulations. These detainers include but are not limited to DHS Form I-247D “Immigration Detainer – Request for Voluntary Action”; DHS I-247X “Request for Voluntary Transfer”; or DHS Form I-247N “Request for Voluntary Notification of Release.”

“Verbal abuse” means the use of a remark which is overtly insulting, mocking or belittling directed at a person based upon the actual or perceived: (1) race, color, sex, religion, national origin, English proficiency, sexual orientation, or gender identity of that person, or (2) citizenship or immigration status of that person or that person's family member.

Section 2. Requesting information prohibited.

No agent or agency shall request information about or otherwise investigate or assist in the investigation of the citizenship or immigration status of any person unless such inquiry or investigation is required by court order.

Section 3. Threats based on citizenship or immigration status prohibited.

No agent or agency shall (a) coerce any person based upon the person’s actual or perceived citizenship or immigration status or the actual or perceived citizenship or immigration status of the person’s family member; (b) communicate a threat to deport that person or any family member of that person under circumstances that reasonably tend to produce a fear that the threat will be carried out; (c) or otherwise subject a person to verbal abuse as defined by this chapter.

Section 4. Conditioning benefits, services, or opportunities on immigrant status prohibited.

- (a) No agent or agency shall condition the provision of City benefits, opportunities, or services on matters related to citizenship or immigration status unless required to do so by state or federal law, or court order.
- (b) Where presentation of a Maryland driver's license or identification card is accepted as adequate evidence of identity, presentation of a photo identity document issued by the person's nation of origin, such as a driver's license, passport, or matricula consular (consulate-issued document), or by a non-profit organization providing living assistance, job placement, or other social and/or human services, shall be accepted and shall not subject the person to a higher level of scrutiny or different treatment than if the person had provided a Maryland driver's license or identification card except that this subsection (b) shall not apply to the completion of the federally mandated I-9 forms.

Section 5. Civil immigration enforcement actions – Federal responsibility.

- (a) No agency or agent shall:
 - (1) arrest, detain, or continue to detain a person based on an immigration detainer, or otherwise comply with an immigration detainer, after that person becomes eligible for release from custody;
 - (2) arrest, detain, or continue to detain a person based on an administrative warrant (including but not limited to entered into the Federal Bureau of Investigation's National Crime Information Center database), or otherwise comply with an administrative warrant, after that person becomes eligible for release from custody;
 - (3) arrest, detain, or continue to detain a person based solely on the belief that the person is not present legally in the United States, or that the person has committed a civil immigration violation;
 - (4) be permitted to accept requests by ICE or other agencies to support or assist in civil immigration enforcement operations, including but not limited to requests to establish traffic perimeters related to immigration enforcement. In the event an agent receives a request to support or assist in a civil immigration enforcement operation he or she shall report the request to his or her supervisor, who shall decline the request and document the declination in an interoffice memorandum to the Chief through the chain of command; or
 - (5) enter into an agreement under 8 U.S.C. § 1357(g) or any other federal law that permits state or local governmental entities to enforce federal civil immigration laws.
- (b) (1) Unless presented with a valid and properly issued criminal warrant, no agency or agent shall:

- (A) permit ICE agents access to a person being detained by, or in the custody of, the agency or agent;
- (B) permit ICE agents use of agency facilities, information, or equipment for investigative interviews or other investigative purpose or for purposes of executing a civil immigration enforcement operation; or
- (C) expend their time or agency resources including phones, email, and vehicles, responding to ICE inquiries or communicating with ICE regarding a person's custody status, release date, or contact information.

Section 6. Avoiding Aiding Federal Government in Acts of Discrimination

It is unlawful to use agency or department moneys, facilities, property, equipment, or personnel to investigate, enforce, or assist in the investigation or enforcement of any federal program requiring registration of individuals on the basis of race, gender, sexual orientation, gender identity, religion, national or ethnic origin, or any other basis protected from discrimination in the Hyattsville Human Rights Act or under state and federal laws.

Section 7. Exchanging file information.

- (A) All applications, questionnaires, and interview forms used in relation to City benefits, opportunities, or services shall be promptly reviewed by the pertinent agencies and any questions regarding citizenship or immigration status, other than those required by statute, ordinance, federal law or court order, shall be deleted within 60 days of the passage of this ordinance.
- (B) A copy of any administrative request received by a City agency from ICE to detain or notify it regarding a person in custody shall be provided to that person in custody.
- (C) City agencies shall report to the Council and Mayor every six (6) months the number of requests received by the City from ICE and the manner in which that request was handled. City agencies shall also respond a request by a Council Member or the Mayor regarding a specific incident covered by this ordinance within 48 hours.

Section 8. Severability.

If any provision, clause, section, part, or application of this chapter to any person or circumstance is declared invalid by any court of competent jurisdiction, such invalidity shall not affect, impair, or invalidate the remainder hereof or its application to any other person or circumstance. It is hereby declared that the legislative intent of the City Council that this chapter would have been adopted had such invalid provision, clause, section, part or application not been included herein.

Section 9. This ordinance shall take full force and effect upon its passage and approval.

EXECUTIVE ORDER

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ENHANCING PUBLIC SAFETY IN THE INTERIOR OF THE UNITED STATES

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Immigration and Nationality Act (INA) (8 U.S.C. 1101 *et seq.*), and in order to ensure the public safety of the American people in communities across the United States as well as to ensure that our Nation's immigration laws are faithfully executed, I hereby declare the policy of the executive branch to be, and order, as follows:

Section 1. Purpose. Interior enforcement of our Nation's immigration laws is critically important to the national security and public safety of the United States. Many aliens who illegally enter the United States and those who overstay or otherwise violate the terms of their visas present a significant threat to national security and public safety. This is particularly so for aliens who engage in criminal conduct in the United States.

Sanctuary jurisdictions across the United States willfully violate Federal law in an attempt to shield aliens from removal from the United States. These jurisdictions have caused immeasurable harm to the American people and to the very fabric of our Republic.

Tens of thousands of removable aliens have been released into communities across the country, solely because their home countries refuse to accept their repatriation. Many of these aliens are criminals who have served time in our Federal, State, and local jails. The presence of such individuals in the United States, and the practices of foreign nations that refuse the repatriation of their nationals, are contrary to the national interest.

Although Federal immigration law provides a framework for Federal-State partnerships in enforcing our immigration laws to ensure the removal of aliens who have no right to be in the United States, the Federal Government has failed to discharge this basic sovereign responsibility. We cannot faithfully execute the immigration laws of the United States if we exempt

classes or categories of removable aliens from potential enforcement. The purpose of this order is to direct executive departments and agencies (agencies) to employ all lawful means to enforce the immigration laws of the United States.

Sec. 2. Policy. It is the policy of the executive branch to:

(a) Ensure the faithful execution of the immigration laws of the United States, including the INA, against all removable aliens, consistent with Article II, Section 3 of the United States Constitution and section 3331 of title 5, United States Code;

(b) Make use of all available systems and resources to ensure the efficient and faithful execution of the immigration laws of the United States;

(c) Ensure that jurisdictions that fail to comply with applicable Federal law do not receive Federal funds, except as mandated by law;

(d) Ensure that aliens ordered removed from the United States are promptly removed; and

(e) Support victims, and the families of victims, of crimes committed by removable aliens.

Sec. 3. Definitions. The terms of this order, where applicable, shall have the meaning provided by section 1101 of title 8, United States Code.

Sec. 4. Enforcement of the Immigration Laws in the Interior of the United States. In furtherance of the policy described in section 2 of this order, I hereby direct agencies to employ all lawful means to ensure the faithful execution of the immigration laws of the United States against all removable aliens.

Sec. 5. Enforcement Priorities. In executing faithfully the immigration laws of the United States, the Secretary of Homeland Security (Secretary) shall prioritize for removal those aliens described by the Congress in sections 212(a)(2), (a)(3), and (a)(6)(C), 235, and 237(a)(2) and (4) of the INA (8 U.S.C. 1182(a)(2), (a)(3), and (a)(6)(C), 1225, and 1227(a)(2) and (4)), as well as removable aliens who:

- (a) Have been convicted of any criminal offense;
- (b) Have been charged with any criminal offense, where such charge has not been resolved;
- (c) Have committed acts that constitute a chargeable criminal offense;
- (d) Have engaged in fraud or willful misrepresentation in connection with any official matter or application before a governmental agency;
- (e) Have abused any program related to receipt of public benefits;
- (f) Are subject to a final order of removal, but who have not complied with their legal obligation to depart the United States; or
- (g) In the judgment of an immigration officer, otherwise pose a risk to public safety or national security.

Sec. 6. Civil Fines and Penalties. As soon as practicable, and by no later than one year after the date of this order, the Secretary shall issue guidance and promulgate regulations, where required by law, to ensure the assessment and collection of all fines and penalties that the Secretary is authorized under the law to assess and collect from aliens unlawfully present in the United States and from those who facilitate their presence in the United States.

Sec. 7. Additional Enforcement and Removal Officers. The Secretary, through the Director of U.S. Immigration and Customs Enforcement, shall, to the extent permitted by law and subject to the availability of appropriations, take all appropriate action to hire 10,000 additional immigration officers, who shall complete relevant training and be authorized to perform the law enforcement functions described in section 287 of the INA (8 U.S.C. 1357).

Sec. 8. Federal-State Agreements. It is the policy of the executive branch to empower State and local law enforcement agencies across the country to perform the functions of an immigration officer in the interior of the United States to the maximum extent permitted by law.

(a) In furtherance of this policy, the Secretary shall immediately take appropriate action to engage with the Governors of the States, as well as local officials, for the purpose of preparing to enter into agreements under section 287(g) of the INA (8 U.S.C. 1357(g)).

(b) To the extent permitted by law and with the consent of State or local officials, as appropriate, the Secretary shall take appropriate action, through agreements under section 287(g) of the INA, or otherwise, to authorize State and local law enforcement officials, as the Secretary determines are qualified and appropriate, to perform the functions of immigration officers in relation to the investigation, apprehension, or detention of aliens in the United States under the direction and the supervision of the Secretary. Such authorization shall be in addition to, rather than in place of, Federal performance of these duties.

(c) To the extent permitted by law, the Secretary may structure each agreement under section 287(g) of the INA in a manner that provides the most effective model for enforcing Federal immigration laws for that jurisdiction.

Sec. 9. Sanctuary Jurisdictions. It is the policy of the executive branch to ensure, to the fullest extent of the law, that a State, or a political subdivision of a State, shall comply with 8 U.S.C. 1373.

(a) In furtherance of this policy, the Attorney General and the Secretary, in their discretion and to the extent consistent with law, shall ensure that jurisdictions that willfully refuse to comply with 8 U.S.C. 1373 (sanctuary jurisdictions) are not eligible to receive Federal grants, except as deemed necessary for law enforcement purposes by the Attorney General or the Secretary. The Secretary has the authority to designate, in his discretion and to the extent consistent with law, a jurisdiction as a sanctuary jurisdiction. The Attorney General shall take appropriate enforcement action against any entity that violates 8 U.S.C. 1373, or which has in effect a statute, policy, or practice that prevents or hinders the enforcement of Federal law.

(b) To better inform the public regarding the public safety threats associated with sanctuary jurisdictions, the Secretary shall utilize the Declined Detainer Outcome Report or its equivalent and, on a weekly basis, make public a comprehensive list of criminal actions committed by aliens and

any jurisdiction that ignored or otherwise failed to honor any detainers with respect to such aliens.

(c) The Director of the Office of Management and Budget is directed to obtain and provide relevant and responsive information on all Federal grant money that currently is received by any sanctuary jurisdiction.

Sec. 10. Review of Previous Immigration Actions and Policies. (a) The Secretary shall immediately take all appropriate action to terminate the Priority Enforcement Program (PEP) described in the memorandum issued by the Secretary on November 20, 2014, and to reinstitute the immigration program known as "Secure Communities" referenced in that memorandum.

(b) The Secretary shall review agency regulations, policies, and procedures for consistency with this order and, if required, publish for notice and comment proposed regulations rescinding or revising any regulations inconsistent with this order and shall consider whether to withdraw or modify any inconsistent policies and procedures, as appropriate and consistent with the law.

(c) To protect our communities and better facilitate the identification, detention, and removal of criminal aliens within constitutional and statutory parameters, the Secretary shall consolidate and revise any applicable forms to more effectively communicate with recipient law enforcement agencies.

Sec. 11. Department of Justice Prosecutions of Immigration Violators. The Attorney General and the Secretary shall work together to develop and implement a program that ensures that adequate resources are devoted to the prosecution of criminal immigration offenses in the United States, and to develop cooperative strategies to reduce violent crime and the reach of transnational criminal organizations into the United States.

Sec. 12. Recalcitrant Countries. The Secretary of Homeland Security and the Secretary of State shall cooperate to effectively implement the sanctions provided by section 243(d) of the INA (8 U.S.C. 1253(d)), as appropriate. The Secretary of State shall, to the maximum extent permitted by law, ensure that diplomatic efforts and negotiations with foreign states include as a condition precedent the acceptance by those foreign states of their nationals who are subject to removal from the United States.

Sec. 13. Office for Victims of Crimes Committed by Removable Aliens. The Secretary shall direct the Director of U.S. Immigration and Customs Enforcement to take all appropriate and lawful action to establish within U.S. Immigration and Customs Enforcement an office to provide proactive, timely, adequate, and professional services to victims of crimes committed by removable aliens and the family members of such victims. This office shall provide quarterly reports studying the effects of the victimization by criminal aliens present in the United States.

Sec. 14. Privacy Act. Agencies shall, to the extent consistent with applicable law, ensure that their privacy policies exclude persons who are not United States citizens or lawful permanent residents from the protections of the Privacy Act regarding personally identifiable information.

Sec. 15. Reporting. Except as otherwise provided in this order, the Secretary and the Attorney General shall each submit to the President a report on the progress of the directives contained in this order within 90 days of the date of this order and again within 180 days of the date of this order.

Sec. 16. Transparency. To promote the transparency and situational awareness of criminal aliens in the United States, the Secretary and the Attorney General are hereby directed to collect relevant data and provide quarterly reports on the following:

(a) the immigration status of all aliens incarcerated under the supervision of the Federal Bureau of Prisons;

(b) the immigration status of all aliens incarcerated as Federal pretrial detainees under the supervision of the United States Marshals Service; and

(c) the immigration status of all convicted aliens incarcerated in State prisons and local detention centers throughout the United States.

Sec. 17. Personnel Actions. The Office of Personnel Management shall take appropriate and lawful action to facilitate hiring personnel to implement this order.

Sec. 18. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP

THE WHITE HOUSE,
January 25, 2017.

TITLE 8 - ALIENS AND NATIONALITY
CHAPTER 12 - IMMIGRATION AND NATIONALITY
SUBCHAPTER II - IMMIGRATION
Part IX - Miscellaneous

§ 1373. Communication between government agencies and the Immigration and Naturalization Service

(a) In general

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.

(b) Additional authority of government entities

Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

- (1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.
- (2) Maintaining such information.
- (3) Exchanging such information with any other Federal, State, or local government entity.

(c) Obligation to respond to inquiries

The Immigration and Naturalization Service shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.

(Pub. L. 104–208, div. C, title VI, § 642, Sept. 30, 1996, 110 Stat. 3009–707.)

Codification

Section was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and also as part of the Omnibus Consolidated Appropriations Act, 1997, and not as part of the Immigration and Nationality Act which comprises this chapter.

Abolition of Immigration and Naturalization Service and Transfer of Functions

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.