

Offered by Councilor Josh Zakim

CITY OF BOSTON



IN THE YEAR TWO THOUSAND FOURTEEN

AN ORDINANCE ESTABLISHING A BOSTON TRUST ACT

WHEREAS, The City of Boston seeks to ensure that all immigrants are able to fully participate in the civic and economic life of their neighborhoods and nurture and grow the spirit of unity in our City; and

WHEREAS, The City of Boston desires to provide opportunity, access, and equality for immigrants, and highlight the essential role immigrants have played and continue to play in moving Boston forward; and

WHEREAS, The federal government's Immigration and Customs Enforcement ("ICE") Secure Communities program uses local law enforcement data to identify suspected "criminal aliens" in local custody; and

WHEREAS, ICE issues civil immigration detainer requests which allow for prolonged detention during which ICE investigates the immigration status of suspected "criminal aliens" in local custody; and

WHEREAS, In other jurisdictions, honoring civil immigration detainer requests based on less than probable cause has been ruled a violation of the Fourth Amendment, exposing local law enforcement agencies to liability under 42 U.S.C. § 1983; and

WHEREAS, When local law enforcement officials indiscriminately honor all ICE civil immigration detainer requests, including those that target non-criminal aliens, immigrant residents are less likely to cooperate and public trust erodes, hindering the ability and effectiveness of Boston's police force; and

WHEREAS, A local Trust Act is necessary to establish the City's policy for responding to ICE's civil immigration detainer requests;

NOW THEREFORE,

Be it ordained by the City Council of Boston, as follows:

Section 1.

Definitions.

- (a) “Civil immigration detainer request” means a non-mandatory request issued by an authorized federal immigration officer under Section 287.7 of Title 8 of the Code of Federal Regulations to a local law enforcement official to maintain custody of an individual for a period not to exceed forty-eight (48) hours, excluding Saturdays, Sundays, and holidays, and advise the authorized federal immigration officer prior to the release of that individual.
- (b) “Convicted” means a state of having been proved guilty in a judicial proceeding, unless the conviction has been expunged or vacated pursuant to applicable law.
- (c) “Eligible for release from custody” means that the individual may be released from custody because any of the following conditions has occurred:
- (1) All criminal charges against the individual have been dropped or dismissed;
 - (2) The individual has been acquitted of all criminal charges filed against him or her;
 - (3) The individual has served all the time required for his or her sentence;
 - (4) The individual has posted a bond, or has been released on his or her own recognizance;
 - (5) The individual has been referred to pre-trial diversion services;
 - (6) The individual is otherwise eligible for release under state or local law.
- (d) “Law enforcement official” means any City of Boston department, or officer or employee of a City of Boston department, authorized to enforce criminal statutes, regulations, or local ordinances; operate jails or maintain custody of individuals in jails; and operate juvenile detention facilities or maintain custody of individuals in juvenile detention facilities.

Section 2.

- (a) Except as provided in subsection (b), a law enforcement official shall not detain an individual on the basis of a civil immigration detainer request 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 request for up to forty-eight (48) hours after that individual becomes eligible for release from custody, excluding Saturdays, Sundays, and holidays, if the individual meets any of the following criteria:
- (1) ICE has a criminal warrant for the individual;
 - (2) The individual has ever been convicted of a violent crime as defined in Massachusetts General Laws Chapter 140, Section 121;
 - (3) In the past ten (10) years, the individual has been convicted of a felony as defined in Massachusetts General Laws Chapter 274, Section 1;
 - (4) The individual is a current registrant on the Massachusetts Sex Offender Registry;
 - (5) The individual is identified in the federal government’s consolidated Terrorist Watchlist.
- (c) Law enforcement officials shall make good faith efforts to seek federal reimbursement for all costs incurred in continuing to detain an individual pursuant to this Section.

Section 3.

Reporting.

Beginning no later than December 31, 2015, and no later than December 31 of each subsequent year, the Boston Police Commissioner shall submit a report to the Clerk of the City of Boston, and the Clerk shall forward the report to the Mayor of the City of Boston and shall docket the report and include the docket on the agenda of the next-occurring meeting of the Boston City

Council. The report shall include the following information for the preceding twelve (12) month period:

- (a) A statistical breakdown of the total number of civil immigration detainer requests lodged with the City's law enforcement officials, organized by the reason(s) given for the request;
- (b) A statistical breakdown of the total number of individuals that City law enforcement officials detained pursuant to Section 2(b), organized by the reason(s) supporting the detention;
- (c) The total number of individuals transferred to ICE custody; and
- (d) A statistical breakdown of the total cost reimbursements received from the federal government pursuant to Section 2(c), organized by individual case.

Section 4.

The provisions of this ordinance shall be effective immediately upon passage.

Filed in Council: June 27, 2014