CHAPTER 314

TOWN OF SCARBOROUGH

ORDINANCE ESTABLISHING MUNICIPAL POLICIES REGARDING FEDERAL IMMIGRATION ENFORCEMENT

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CHAPTER 314

ORDINANCE ESTABLISHING MUNICIPAL POLICIES REGARDING FEDERAL IMMIGRATION ENFORCEMENT

Be it ordained by the Town Council of the Town of Scarborough as follows:

SECTION 1. PURPOSE AND INTENT

The Town of Scarborough recognizes that immigration enforcement is the responsibility of the federal government and that the Town's limited employees, facilities, equipment, funds and other resources should primarily be dedicated to municipal responsibilities, public safety and the needs of Scarborough residents.

The purpose of this ordinance is to:

1. Establish clear and consistent procedures for Town employees when interacting with immigration authorities;
2. Ensure that Town resources are not used for federal civil immigration enforcement except when required by state or federal law or judicial order;
3. Protect the privacy and due-process rights of persons interacting with Town government to the fullest extent permitted by law; and
4. Ensure that requests from immigration authorities are handled consistently and appropriately by designated Town officials.

Nothing in this ordinance shall be interpreted to interfere with the Town's obligation to comply with federal or state law, a valid judicial order, or lawful federal law-enforcement activity.

SECTION 2. DEFINITIONS

For purposes of this ordinance:

A. "Immigration authority" means a federal, state, or local officer, employee or other person performing immigration enforcement functions, including the Department of Homeland Security.

B. "Immigration enforcement" means any effort to investigate, enforce or assist in the investigation or enforcement of any federal civil immigration law and include any effort to investigate, enforce or assist in the investigation or enforcement of any violations of Title 8 of the United States Code.

C. "Town employee" means any employee, officer, official or agent of the Town of Scarborough acting in their official capacity.

D. "Town resources" means Town employees, funds, vehicles, equipment, facilities, information systems, databases and other property owned, leased or controlled by the Town.

SECTION 3. USE OF TOWN RESOURCES

Except where required by state or federal law or judicial order, no Town employee or department shall knowingly use Town resources to assist, cooperate with or facilitate immigration enforcement.

This prohibition includes, but is not limited to:

A. Providing Town employees solely to assist immigration enforcement;

B. Using Town vehicles, equipment, technology or other property to facilitate immigration enforcement;

C. Establishing traffic control or perimeters solely for the purpose of facilitating immigration enforcement; and

D. Providing Town facilities or other Town resources for the purpose of conducting immigration enforcement.

Nothing in this section prohibits a Town employee from responding to an emergency, protecting public safety, investigating a criminal offense, or otherwise performing their ordinary municipal responsibilities.

SECTION 4. ACCESS TO NONPUBLIC TOWN PROPERTY

Immigration authorities shall not be granted voluntary access by a Town employee to nonpublic areas of Town-owned or Town-controlled property for purposes of immigration enforcement unless:

A. The access is required by state or federal law;

B. The immigration authority presents a valid judicial warrant or other legally sufficient judicial order; or

C. The Town Attorney determines that access is otherwise legally required.

Town employees shall not independently determine the legal sufficiency of a subpoena, warrant, or immigration-enforcement document. Such requests shall be referred promptly to the Town Manager or the Town Attorney.

Nothing in this section limits access to portions of Town property that are lawfully open to the general public.

SECTION 5. INFORMATION REQUESTS

Except where required by state or federal law or judicial order, Town employees shall not knowingly collect or disclose information for the purpose of assisting immigration enforcement when that information is not otherwise collected or maintained as part of the Town's lawful municipal functions.

A request for information relating to immigration enforcement shall be referred to the Town Manager or the Town Attorney for review.

Nothing in this section prohibits:

A. The collection or maintenance of information required for legitimate municipal purposes;

B. The disclosure of information required by The Freedom of Access Act, other law, judicial subpoena or judicial order;

C. The cooperation in the investigation of a criminal offense unrelated to a person's immigration status, or allowed by state law; or

D. Any disclosure necessary to protect an individual's life or prevent an imminent threat to public safety.

SECTION 6. NO IMMIGRATION-ONLY ENFORCEMENT BY TOWN EMPLOYEES

No Town employee shall stop, arrest, detain or continue to detain a person solely for purposes of civil immigration enforcement, except to the extent expressly required by state or federal law.

Nothing in this section limits the authority or duty of Scarborough Police Officers to enforce Maine criminal law or otherwise perform their lawful public-safety duties.

Nothing in this ordinance shall be interpreted to restrict cooperation with federal, state or local law-enforcement agencies concerning criminal investigations where the primary purpose of the investigation is not immigration enforcement.

SECTION 7. AGREEMENTS WITH FEDERAL IMMIGRATION AUTHORITIES

Town departments and employees may not negotiate nor enter into any agreement, contract or other arrangement that authorizes an immigration authority to use Town employees or resources for immigration enforcement unless expressly authorized or required by state or federal law or judicial order.

Any proposed agreement involving immigration enforcement shall be referred to the Town Manager and Town Attorney before negotiation.

SECTION 8. DESIGNATED RESPONSE PROCEDURE

The Town Manager shall establish a written procedure for responding to requests from immigration authorities.

The procedure shall:

A. Identify the Town officials authorized to receive and respond to such requests;

B. Require Town employees to promptly refer requests for access to nonpublic property or confidential information to the designated official;

C. Establish procedures for reviewing warrants, subpoenas, detainers and other legal documents relating to immigration;

D. Provide Town employees with guidance concerning public and nonpublic areas of Town property; and

E. Ensure that employees understand when they are legally required to cooperate and when cooperation is discretionary.

SECTION 9. DOCUMENTATION AND REPORTING

When a Town employee or department receives a request from an immigration authority to assist in immigration enforcement, the employee shall, to the extent permitted by law, document the request and refer it to the employee's supervisor and the Town Manager. When documenting any verbal request, the Town employee shall not record the name, other personally identifiable information, or confidential information of the person of whom information is sought. The Town employee shall only record the following information if known:

1. The person or entity making the request;
2. The Town department receiving the request;

3. The general nature of the request; and
4. Whether the request was granted, denied or referred for legal review.

At least annually, the Town Manager shall provide the Town Council with a report identifying, to the extent permitted by law, the number of requests received and a summary of the four factors listed above. The report shall not contain confidential information or personally identifiable information when disclosure is prohibited by law. The Police Chief shall maintain records of requests to the Police Department and to provide sufficient details of the records consistent with federal and state law necessary to allow the Town Manager to create this report.

SECTION 10. EMPLOYEE TRAINING

The Town Manager shall provide appropriate training to Town employees regarding this ordinance.

Training shall include, as appropriate:

A. The distinction between administrative immigration documents and judicial warrants;

B. The distinction between public and nonpublic areas of Town property;

C. Procedures for responding to immigration authorities;

D. Procedures for handling information requests related to immigration or requests from an immigration authority;

E. Procedures for distinguishing public records from confidential information; and,

F. The employee's obligation to refer legal questions to the appropriate Town official.

SECTION 11. COMPLIANCE WITH STATE AND FEDERAL LAW

Nothing in this ordinance shall:

A. Prevent the Town or any employee from complying with federal or state law;

B. Prevent compliance with a valid judicial warrant, judicial subpoena or court order;

C. Interfere with a state or federal law enforcement officer's lawful authority;

D. Restrict lawful cooperation concerning criminal activity; or

E. Confer upon the Town authority to regulate or interfere with immigration enforcement.

SECTION 12. SEVERABILITY

If any provision of this ordinance is determined to be invalid or unenforceable, that determination shall not affect the validity or enforceability of the remaining provisions.

SECTION 13. EFFECTIVE DATE

This ordinance shall take effect in accordance with the Charter and ordinances of the Town of Scarborough.