LASafe
Response to President Trump’s termination of the DREAMER program and divisive policies regarding racial and ethnic equality and the observance of fundamental human rights

Peter Schey
Immigrant and Civil Rights Advocate
City of Los Angeles
Special Report #1
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To: The Los Angeles City Council, Immigrant Affairs, Civil Rights and Equity Committee
   Councilmember Gilbert A. Cedillo, Chair
   Council President Herb Wesson
   Councilmember Jose Huizar
   Councilmember Nury Martinez
   Councilmember Curren D. Price, Jr.
   Councilmember David Ryu

Two days ago, President Trump dispatched his attorney general, Jeff Sessions, a public servant with a long history of anti-immigrant sentiments, to announce that the administration would no longer shield from deportation 800,000 young undocumented immigrants who bear no responsibility for their parents’ decisions made many years ago to bring them to the United States without border inspection. DHS has only issued demographic data for the first year of the DACA program that granted DREAMER status, and in that year 28 percent of all DREAMER applicants lived California and 14 percent in the Los Angeles metro area. The median age of entry for DREAMERS is 6 years old.

Tens of thousands of DREAMERS live, attend school and work in the City of Los Angeles and are now overcome by fear about whether they will be rounded up and deported from the city where they grew up and have built their lives. This follows on the heels of President Trump’s history of threats to round up and deport about ten million immigrants, contract for 100,000-200,000 new immigrant detention beds, build a wall to keep out Mexican “rapists,” etc. These threats have made local communities less safe and less healthy by causing widespread fear in immigrant communities, driving immigrants deeper underground, decreasing their cooperation with law enforcement, and increasing the willingness of unscrupulous employers, landlords and others to illegally exploit them based upon their vulnerable status. Many of the harms threatened by Mr. Trump’s policies can be avoided through proactive city, county and state initiatives.

This report proposes steps the City of Los Angeles can take to create a model response to federal anti-immigrant policies, delivered with racial and religious divisiveness, all harmful to the overall health, safety and diversity of the communities local officials are elected to govern.
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SUMMARY OF THE REPORT

1. Make Los Angeles a DREAMER Arrest Free Zone

Except in exigent circumstances that may endanger health or safety or result in the destruction of evidence, no DREAMER should ever be arrested by ICE in the City of Los Angeles. If ICE wishes to interview a DREAMER, it can send written notices to appear. No DREAMER should be arrested without a warrant or probable cause in the City of Los Angeles. Targeting DREAMERS for immigration-related arrest will discourage reporting and prosecution of crime, and drive these residents underground, adversely impacting the health and safety of the citizens of Los Angeles.

To make Los Angeles a DREAMER arrest-free zone, the City should provide resources and funding, and seek additional outside funding, to achieve the following –

i. Know Your Rights trainings and issuance of “Representation Letters” to all Los Angeles DREAMERS to avoid warrantless arrests in the City of Los Angeles

The City should facilitate a series of community-meetings sponsored by all Council members and the Mayor’s Office (i) to advise DREAMERS and other immigrants possibly eligible for legalization about their rights and the range of services available in Los Angeles, and (ii) to issue all DREAMERS and other immigrants “representation letters” – to be presented during any contacts with ICE enforcement officers – executed by attorneys asserting the DREAMER’s rights. Letters instructing ICE that the bearer exercises her/his right to remain silent and any questioning would be unlawful under federal law, will in many cases prevent arrest unless ICE possesses an arrest warrant, something it rarely does. Representation letters may also be issued using a DREAMER phone app or web site. PSAs sponsored by the City and flyers distributed at all City facilities should advise DREAMERS and other immigrants about how to register for a Los Angeles know-your-rights seminar, and how to register via a phone app or the internet for an attorney representation letter.

ii. Immediate bond hearings to secure the prompt release of any arrested DREAMER

Second, should a DREAMER or other resident be arrested by ICE, their first and most important concern is with getting out of custody as quickly as possible, rejoining their family, and getting back to school or their other daily responsibilities. The City should provide funding and resource support (internet web sites, model pleadings, local trainings, etc.) so that local organizations and pro bono attorneys provide prompt representation in “bond hearings” to win the release of any detained DREAMER, or other City resident arrested by ICE, not subject to so-called “mandatory detention” under federal law. Once immigrants are released from custody, they will have about
two years before their deportation cases are heard, leaving a substantial period of time to prepare for their hearings and sort out legal representation. The City should also continue its Justice Fund contribution for representation for immigrants in mandatory detention.

iii. Services to legalize status and naturalize long-term lawful residents

There are simple and cost-effective steps local organizations supported with resources and funding provided by the City can take to decrease the likelihood that Los Angeles residents will ever be arrested, and will ever need to undergo grueling deportation hearings. Thousands of DREAMERS, their family members, and other immigrants living in the City may be eligible to legalize their status, and thousands of others are likely eligible for naturalization. Through resources (web site, PSA’s, phone app, seminars, etc.) and funding to community-based organizations, these DREAMERS, their families, and other similarly situated immigrants, may obtain legal status or complete the naturalization process and have far greater opportunities to engage in the diverse civic life of the City.

2. President Trump’s showboating about penalties against Sanctuary Cities has no basis in law and is primarily intended to dazzle his base and intimidate local officials.

As discussed in detail in the report, elected local and state officials are universally concerned that local policies should not violate federal laws or place federal funding in jeopardy. The common concern is with compliance with Title 8 United States Code § 1373. This section requires that local entities not block communication with DHS about any individuals’ “citizenship” or “immigration status,” if the local entity actually collects such information. At bottom, both the City of Los Angeles and its Police Department could increase protections of immigrant communities and other insular minorities without in any way violating federal laws.

3. Enactment of a Human Rights Ordinance that would be a model for local and state jurisdictions willing to take affirmative pro-human rights steps in response to President Trump’s anti-human rights policies.

Given the movement of federal policies under President Trump away from human and civil rights protections, and Mr. Trump’s public utterances many see as encouraging xenophobia and racial and religious disharmony in the City of Los Angeles, it appears City, County and State measures extending greater human rights protections to a range of marginalized communities should now be adopted.

Without conflicting with state or federal laws, a Los Angeles ordinance may extend civil and human rights protections to all City residents, including DREAMERS, based on their “Protected Status.” Protected Status may include, for example, immigration status, race, color, citizenship, national origin, ancestry, religion, age, sex, pregnancy, mental or physical disability, family status, sexual orientation, veteran status, political opinion, genetic information, medical
condition, or other immutable characteristic. A proposed human rights ordinance is attached to this Report.

I recommend the establishment of a Human Rights Commission, with members appointed by the City Counsel and confirmed by the Mayor, to hear and adjudicate claims of discrimination, threats, retaliation, etc. Such a Commission will be authorized to mediate disputes, conduct discovery, hold hearings, and impose penalties including injunctions, fines, damages, termination of licenses, and other appropriate remedies. Such an administrative remedy avoids the long delays and high costs, and need for attorney representation, that often discourage marginalized and low-income people from vindicating their civil and human rights if required to do so only in the state courts.

4. **Decriminalization of minor offenses likely to be committed by low-income residents**

Los Angeles has a substantial population of undocumented immigrant residents and also has a homeless population of thousands of children and adults. The vast majority of homeless people in Los Angeles are people of color. Los Angeles also has harsh laws punishing those who are poor and homeless. It appears that Los Angeles has nine ordinances criminalizing begging and panhandling, and fifteen laws criminalizing standing, sitting, or resting. Criminal convictions are considered when DHS makes discretionary decisions that may involve whether or not a city resident, including those with US citizen children, will or will not be deported. A City effort should be undertaken to review whether some current minor criminal offenses may be converted to civil matters.

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**TABLE OF CONTENTS**

I. Making Los Angeles an Arrest Free Zone and Detention Free Zone for DREAMERS and other immigrant residents .................................................................1

II. Los Angeles can adopt important protections for immigrants and other marginalized communities in a manner fully consistent with federal and State laws. ..................2

   1. Federal law places no significant restrictions on Los Angeles’ ability to enact pro-immigrant and pro-civil rights policies.................................................................3

   2. Trump’s Executive Orders about “Sanctuary Cities” are mostly political rhetoric and would be struck down by the courts if implemented ...........................................5

   3. There is no State law precluding Los Angeles from enacting a comprehensive civil rights ordinance that maximizes the protection of immigrants and other minorities.6

III. Comprehensive Los Angeles City civil and human rights legislation ......................6

   1. Legislation may provide protections to immigrants and other vulnerable communities..........................................................................................................................7

   2. Protections that may be extended to residents based upon their Protected Status ....7

   3. The City must decide whether to limit remedies to court actions or to create an administrative body to avoid the costs, complexity and delays in court litigation ......7

   4. Permits, licenses, franchises, benefits, exemptions, or advantages issued by or on behalf of the City of Los Angeles....................................................................................8

IV. Decriminalization of minor offenses likely to be committed by low-income residents.....8

V. The City’s Involvement in Litigation in response to Trump’s Executive Orders........9

VI. Special Order 40 – How much cooperation with ICE beyond what is required by federal law is sound public policy................................................................................10

Proposed Los Angeles City Human and Civil Rights Law ..................................................11

Appendix 8 USC § 1373..................................................................................................23

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I. Making Los Angeles an Arrest Free Zone and Detention Free Zone for DREAMERS and other immigrant residents

Other jurisdictions with large immigrant populations, including the City of New York, Chicago and Washington, DC, devote far greater resources to immigrant services and funding than does the City of Los Angeles. Long-term planning should consider how greater resources may be allocated to immigrant services as well as services to other minority communities. Inequality is a profound challenge to the wellbeing of the City’s vibrant diversity and adequately funded long-term City sponsored programs are an essential part of eliminating racial, social and economic disparities. Such programs must be designed to enhance self-empowerment within the DREAMER and other marginalized communities, with a strong emphasis on leadership development within these communities.

First, with regards funding and resources (internet web site, development of an easy to use phone app, etc.) made available to assist and represent DREAMERS and other immigrants, any city’s or county’s focus should be on the highest priority in the immigrant community: Avoiding illegal warrantless arrests at the hands of ICE. DREAMERS of course don’t want to be deported, but if they are never arrested, they will never face deportation.

The vast majority of ICE arrests in Los Angeles and elsewhere take place with no warrants. ICE develops “probable cause” to arrest by getting the people it randomly stops and questions in public areas to admit that (i) they were born abroad, and (ii) possess no valid “papers.”

However, if Los Angeles DREAMERS are armed with “letters of representation” that could be issued using an easy to use phone app or web site, and City-sponsored group meetings with pro bono lawyers, they could present their representation letters during random ICE enforcement operations and exercise their right to remain silent. Without probable cause, under federal law the DREAMER cannot be arrested without an arrest warrant. ICE seldom possesses such warrants when conducting randomized questioning and arrests in public areas.

Second, funding and resource support (internet web sites, model pleadings, local trainings, etc.) should focus on organizations and pro bono attorneys providing legal assistance in bond hearings to win the release of as many detained people as possible who are eligible for release under current federal law. A DREAMER in custody wants nothing more than to be released from custody and return to her or his family. Once DREAMERS and other detained immigrants are released from custody, their actual deportation hearings will be scheduled in about two years, leaving a long period of time to adequately prepare for such hearings and sort out legal representation.

Third, most detained immigrants unable to secure their release on bond are being held in so-called “mandatory detention” because of outstanding criminal convictions, that may or may not involve violence. In many of these cases, the only proper defense is actually a criminal defense
requiring an experienced criminal lawyer to overturn the conviction on constitutional grounds and then enter a plea to a non-deportable offense or establish the immigrant’s innocence resulting in a dismissal of all charges.

Fourth, in at least one other jurisdiction with a high immigrant population, funding has been used to hire one or two immigration/deportation lawyers to work in the City Attorneys Office to assist in developing plea agreements that in appropriate cases avoid a defendant’s arrest and deportation. The City may also develop a more robust pre-arrest and pre-plea diversion programs so immigrants do not face unintended consequences of later deportation based on relatively insignificant criminal conduct. These are effective ways of avoiding people being placed in deportation hearings in the future and needing City-funded deportation defense work.

Finally, thousands of DREAMERS, their family members, and other immigrants living in Los Angeles are eligible to legalize their status or naturalize under existing federal laws but have not taken steps to exercise their rights because of poverty, fear, or lack of knowledge of their rights.

There are simple and cost-effective steps local organizations supported by the City can take, including easy to use technologies such as phone apps and an interactive web site, to decrease the likelihood that DREAMERS will ever be arrested because they have sought legalization of status.

As the City assesses its long-term commitment to supporting the defense of immigrant communities, it should consider pro-active programs DREAMERS and other immigrants themselves identify as being of the utmost importance to their safety and security, in particular avoiding arrests without probable cause that in turn lead to detention and complex and costly deportation hearings.

II. Los Angeles can adopt important protections for immigrants and other marginalized communities in a manner fully consistent with federal and State laws.

State and local elected officials around the country have taken various steps to prohibit their government entities or employees from cooperating with Immigration and Customs Enforcement (ICE) in its activities to enforce federal immigration laws because it is universally recognized that such cooperation significantly discourages immigrants from reporting crime and cooperating with local law enforcement agencies.¹

Nevertheless, elected local and state officials are universally concerned that local policies should not violate federal laws or place federal funding in jeopardy. The common concern is with compliance with Title 8 United States Code § 1373. This concern and unfamiliarity with the limits of federal laws relating to immigration policy has resulted in elected officials agreeing to

state or local cooperation with ICE to a far greater extent than is required by federal law or that is probably good public policy.

1. Federal law places no significant restrictions on Los Angeles’ ability to enact pro-immigrant and pro-civil rights policies

The relevant federal law is set out in section 1373 of Title 8 of the United States Codes (8 U.S.C. § 1373). The relevant language in the statute states that local governments may not in any way restrict any employee from sending to (or receiving from) DHS or other agencies “information” “regarding the citizenship or immigration status” of any individual. If such information exists, it must be “maintain[ed],” though the statute does not say for how long.²

 Properly read, § 1373 requires remarkably little from local Governments and leaves them free, in the exercise of their discretion, to extend protections to all people regardless of immigration status and to limit involvement of local agencies and police departments in matters of federal immigration enforcement except that if DHS requests information regarding the citizenship or immigration status of any individual, and the local entity possesses such information, it must provide it to DHS.

It is the policy of the City of Los Angeles and its police department to fully comply with 8 U.S.C. § 1373. City funding is therefore not threatened by federal laws or authorities.³

Section 1373 by its plain terms does not prevent the City of Los Angeles or its Police Department from –

(1) calling itself a “Sanctuary City” or “City of Sanctuary,” or city of anything it chooses to

² The section also provides that DHS must respond to inquiries from local Governments about the immigration status of any individual. The full text of 8 USC § 1373 is attached in the Appendix.
³ San Francisco and Santa Clara Counties have filed suit in federal court in San Francisco and obtained a temporary injunction blocking the federal government from suspending or withholding law enforcement federal funds. However, the US Department of Justice made clear in that lawsuit that the federal government did not plan to block San Francisco’s or Santa Clara’s federal funds because both local jurisdictions were in full compliance with 8 U.S.C. § 1373. California also recently filed a similar lawsuit although no state funds are in jeopardy because California has never adopted laws or policies that violate 8 U.S.C. § 1373. Senate Bill 54, now being considered by the California legislature, places some restrictions on California’s and local entities’ cooperation with ICE, but makes clear it does not require any acts that violate 8 USC § 1373. Because SB 54 requires greater cooperation with ICE than federal law requires, the City should consider seeking an amendment to SB 54 allowing local entities to adopt policies consistent with federal law that prohibit certain forms of cooperation with ICE that are permitted or required by SB 54.
describe itself,

(2) providing services to residents regardless of immigration status,

(3) providing identification cards to its residents regardless of immigration status,

(4) refusing to question people about their immigration status or place of birth other than when hiring city employees,

(5) refusing to honor ICE “detainers” unless accompanied by a federal court order,

(6) refusing to permit ICE to interview inmates in local jails,

(7) declining to provide ICE with information about anyone’s address or criminal history,

(8) declining to advise ICE about detainees’ release dates, or

(9) declining to consent to ICE entry onto non-public areas of city properties without a judicial warrant or exigent circumstances.

None of these policies are barred by § 1373. Title 8 of the US Code § 1373 only requires that local entities not block communication with DHS or any other agency about individuals’ “citizenship” or “immigration status,” if the local entity actually collects and possesses such information. The law does not require that a local entity gather such information.\(^4\)

In reviewing about 200 local entities that refer to themselves as “sanctuary” cities, etc., none currently appear to be in violation of federal law. To varying degrees they make services available to immigrants and protect a range of civil rights, and almost always actually state that their policies are to be implemented “consistent with” 8 USC § 1373 and federal law.\(^5\)

“At bottom, both the City of Los Angeles and its Police Department could increase protections of immigrant communities and other insular minorities without in any way violating current federal laws.

\(^4\) Other federal laws restrict what a local Government may do with regards immigrant residents. It may not, for example, issue legitimate “work permits” to undocumented immigrants, or permit the employment of those without federal employment authorization. Nor may it grant undocumented immigrants “lawful” status that would be recognized by the federal Government. Nor may it prohibit ICE agents from being present in public areas of a local jurisdiction.

\(^5\) Based on “federal preemption” over the area of immigration law, the courts have frequently intervened to block local Governments from enacting laws imposing restrictions on unauthorized immigrant populations.
Immigration enforcement is a federal function and any significant involvement by the City of Los Angeles in immigration enforcement may actually expose the City to potential liability. We successfully blocked implementation of Proposition 187 in a federal court in Los Angeles precisely because the actions it required local officials to take to assist in immigration enforcement was preempted by federal law. Arizona’s SB 1070 involving local authorities in immigration enforcement matters was also blocked by the federal courts.

Aside from the legalities involved, the vast majority of local and state law enforcement officials agree that the more local entities cooperate with ICE enforcement activities, the less immigrants will report crimes and the more violent criminals will remain on the streets and avoid prosecution and sentencing.

2. Trump’s Executive Orders about “Sanctuary Cities” are mostly political rhetoric and would be struck down by the courts if implemented

On January 25, 2017, President Donald J. Trump issued Executive Order 13768, "Enhancing Public Safety in the Interior of the United States." ("EO"). Section 1 reads, in part, "Sanctuary jurisdictions across the United States willfully violate Federal law in an attempt to shield aliens from removal from the United States." EO §1. This statement is political hyperbole, or “showboating,” and is without any legal foundation. The substance of the EO is in § 9(a):

the Attorney General and the Secretary, … to the extent consistent with law, shall ensure that jurisdictions that willfully refuse to comply with 8 USC 1373 (sanctuary jurisdictions) are not eligible to receive Federal grants, except as deemed necessary for law enforcement purposes … 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. [Emphasis added].

First, this makes clear that a “sanctuary city” is not one that says it's one, but rather is limited to local governments that “refuse[s]” to comply with 8 U.S.C. 1373. There are no such cities I am aware of. Trump’s threats about prosecuting “sanctuary cities” all around the country are simply showboating for his largely anti-immigrant base. As already discussed, compliance with 8 U.S.C. § 1373 requires that City employees not be prohibited from providing DHS with information about anyone’s citizenship or immigration status, if the local entity gathers such information in the first place.

The second part of the EO text -- local entities will face penalties if they do anything that “prevents or hinders the enforcement of Federal law” -- is political rhetoric. No federal law or judicial decision has ever supported this broad notion of federal power over how local governments act to protect their citizens and residents.

In the case of *Santa Clara County v. Trump*, 2017 *U.S. Dist. LEXIS 62871*, (2017), the DOJ lawyers very rapidly back-tracked from this language. They argued that "[i]f the grant language does not require compliance with Section 1373, the Executive Order does not purport to give the Secretary or Attorney General the unilateral authority to alter those terms." Under Section 9 the Attorney General and Secretary will simply ensure that grants that are already conditioned on compliance with Section 1373 are not remitted to jurisdictions that fail to meet that requirement. If a local entity did not comply with Section 1373, the DOJ disclaimed the ability to enforce the Executive Order against any but three programs, SCAAP, JAG and COPS. Los Angeles City complies with Section 1373 and under current law its funding does not appear to be in any danger.

3. There is no State law precluding Los Angeles from enacting a comprehensive civil rights ordinance that maximizes the protection of immigrants and other minorities

"[T]he statute which amended the Unruh Civil Rights Act in 1976 to add this provision makes clear the understanding of the Legislature: ‘It is the intent of the Legislature that the State of California by the provisions of this act not preempt this area of concern so that other jurisdictions in the state may take actions appropriate to their concerns.’" *San Jose Country Club Apartments v. County of Santa Clara*, 137 Cal. App. 3d 948 (1982) (quoting Stats., 1976, ch. 366, § 3, p. 1013.)

III. Comprehensive Los Angeles City civil and human rights legislation

With preliminary concerns about federal power addressed above, it is possible to begin assessing the options available to the City of Los Angeles by way of enactment of an ordinance to keep the City’s residents safe and secure in the face of ill-conceived executive orders that will drive up crime and in the long run lower the bar on the city’s overall health and safety.

*A preliminary draft proposed ordinance is attached.*

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8 While not discussed in detail here, yet another protection against penalties for pro-immigrant policies is the Tenth Amendment. The Tenth Amendment helps to define the concept of federalism, the relationship between Federal and state governments. Nowhere in the federal Constitution is Congress given authority to regulate local matters concerning the health, safety, and morality of state residents. Known as POLICE POWERS, such authority is reserved to the states under the Tenth Amendment.
1. **Any legislation may provide protections to immigrants and other vulnerable communities.**

The Council must decide whether it wishes to consider legislation limited to protection of immigrant communities or whether to use this opportunity to enact an ordinance providing civil and human rights protections to a range of vulnerable minority communities.

Given the pervasive nature of racial inequality, widespread discrimination against insular groups including Muslims, African-Americans, Native-Americans, people with disabilities, etc., it appears legislation covering a range of marginalized communities should be considered. Such an ordinance may extend civil and human rights protections to all City residents based on their “Protected Status” including, for example, race, color, citizenship, immigration status, national origin, ancestry, religion, age, sex, pregnancy, mental or physical disability, family status, sexual orientation, veteran status, political opinion, genetic information, medical condition, or other immutable characteristic.

2. **What protections may be extended to residents based upon their Protected Status**

A proposed ordinance would prohibit discrimination in a range of situations including but not limited to housing, employment, consumer affairs, access to City services, advertising, access to education, etc.

In various areas exceptions must be made to accommodate applicable State or federal laws or to comply with judicially-created exceptions. For example, nothing contained in the ordinance should be deemed to prohibit selection, rejection or dismissal based upon a bona fide occupational qualification; nothing in the ordinance should be construed to require anyone to refer for employment, hire, or continue to employ an individual in violation of federal law; etc.

It is my recommendation that a model human rights ordinance be adopted with enforceable and effective penalties, including, for example, fines, damages, injunctions, and loss of licenses.

3. **The City must decide whether to limit remedies to court actions or to create an administrative body to avoid the costs, complexity and delays in court litigation**

It is widely accepted that vindicating civil rights in courts is a costly, complex and lengthy process and almost always requires representation by counsel.

*The City Council should consider establishing a Human and Civil Rights Commission or office authorized to receive and adjudicate complaints filed by persons alleging discrimination, or a general pattern of such discrimination, in violation of the ordinance.*

Complainants could also file their complaints in a State court. No person who maintained, in a
court of competent jurisdiction, any action based upon an act which would be an unlawful discriminatory practice under the ordinance, would be permitted to file the same complaint with the City’s Commission or Office.

Any person suffering a legal wrong, or adversely affected or aggrieved by an order or decision of the City’s Commission or Office, would of course be entitled to judicial review thereof.

A mediation program should be established and all complaints mediated before the Office or Commission commences a full investigation. During the mediation the parties would discuss the issues of the complaint in an effort to reach an agreement that satisfies the interests of all concerned parties.

As noted above, remedies may include corrective actions, damages, fines, injunctions or possibly misdemeanor charges.

The cost of a Commission or Office to adjudicate discrimination claims will depend on the extent to which such an entity operated with paid versus pro bono members and the size of a staff the City wished to dedicate to the adjudication mechanism. The City may commence a program with a limited staff to assess how many complaints are received that must be adjudicated. An initial staffing pattern may include a director of the Commission or Office, two or three full-time investigators, and two or three clerical staff. Members of the Commission or Office could be appointed to serve one or two year terms with no financial compensation. Major law firms could be approached to solicit candidates for pro bono membership on the Commission or Office.

4. Permits, licenses, franchises, benefits, exemptions, or advantages issued by or on behalf of the City of Los Angeles

All permits, licenses, franchises, benefits, exemptions, or advantages issued by or on behalf of the City of Los Angeles, may require and be conditioned upon full compliance with the provisions of the civil rights ordinance; and may specify that the failure or refusal to comply with any provision of the anti-discrimination ordinance may be a proper basis for revocation of such permit, license, franchise, benefit, exemption, or advantage.

IV. Decriminalization of minor offenses likely to be committed by low-income residents

Los Angeles has a substantial population of undocumented immigrant residents and also has a homeless population of thousands of children and adults. The vast majority of homeless people in Los Angeles are people of color.

Los Angeles also has harsh laws punishing those who are poor and homeless. It appears that Los Angeles has nine ordinances criminalizing begging and panhandling, and fifteen laws criminalizing standing, sitting, or resting.
City ordinances criminalizing non-dangerous behaviors provide an opportunity for local police to bring immigrants and other poor people into the criminal justice system where they become exposed to arrest, criminal records, and if they’re immigrants, potential ineligibility for legalization of status or deportation by ICE. Criminal convictions are considered when DHS makes discretionary decisions that may involve whether or not a city resident, including those with US citizen children, will or will not be deported.

A City effort should be undertaken to review whether some current criminal offenses may be converted to civil matters.

V. The City’s Involvement in Litigation in response to Trump’s Executive Orders

“Sanctuary City” litigation: As discussed above, a federal court has already preliminarily enjoined portions of the Executive Order threatening funding cuts to so-called sanctuary cities. The federal government has substantially back-tracked on what the Executive Order means and now appears to limit it to jurisdictions that refuse to comply with Title 8 US Code § 1373. Inasmuch as LA City likely has no intention to start violating § 1373, there does not appear to be a need for the City to initiate litigation regarding potential future threats to federal funding.

Consideration may be given to other areas of potential litigation:

1. Unreasonable delays in the processing of naturalization applications possibly motivated by a desire of the Administration to engage in voter registration suppression. Basically, it appears as if the Trump administration is building a virtual “wall” slowing down the naturalization process in favor of allocating resources to increased detention and removal.

2. President Trump intends to expand “expedited removal” nationwide. This procedure is now only used along the border. In essence, persons who ICE believes have lived here for less than two years when apprehended may be removed without a formal deportation hearing. If implemented, this policy may impact thousands of Los Angeles residents and result in their deportation without due process of law (e.g. without some type of impartial decision-maker to assess whether the person has in fact lived in the country for less than two years or whether they are eligible for some other form of relief from removal, such as a U visa available to victims of serious crimes who cooperated with law enforcement).

3. President Trump intends re-classify apprehended immigrant children from “unaccompanied” to “accompanied” status if they are released and reunited with a parent. The Administration has also indicated it may seek to deport undocumented parents a child unites with. Many minors living in Los Angeles will be adversely impacted by this policy. They will no longer be entitled to federally funded legal services or to formal due process deportation hearings.

The City of Los Angeles would likely have standing to initiate or join lawsuits on the issues mentioned above because its residents and organizations funded by the City to provide services
to immigrants would be harmed by these policies.

These matters require further discussion if the City Council wishes to explore and better understand areas in which the City could join or initiate litigation challenging federal policies that would harm city residents and organizations.

VI. Special Order 40 – How much cooperation with ICE beyond what is required by federal law is sound public policy

In a subsequent report I will provide the Committee with a set of recommendations regarding local policing and its relationship to immigration enforcement. As a preliminary matter, it appears that current LAPD policy permits and sometimes requires involvement in immigration federal enforcement in more situations than is required by federal law. Special Order 40 is particularly broad in its terms permitting cooperation with ICE in far wider circumstances than required by any federal law. The limited requirements of federal law are discussed above.

I have had a productive meeting with LAPD Chief Beck and recommend that a follow-up meeting be scheduled with Chief Beck and representatives of the City Council to discuss and assess certain current policies permitting cooperation with ICE beyond that compelled by federal law and to explore the extent to which these policies should remain unchanged or be modified in order to enhance cooperation between immigrant communities and police officers employed by the LAPD.

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[DRAFT]

THE LOS ANGELES CITY HUMAN AND CIVIL RIGHTS LAW

ORDINANCE NO. ____________

An ordinance adding Article 5.11 to Chapter IV of the Los Angeles Municipal Code to prohibit discrimination based on a protected status.

THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS follows:

Section 1. A new article 5.9 is added to Chapter IV of the Los Angeles Municipal Code to read as follows:

ARTICLE 5.11

THE HUMAN AND CIVIL RIGHTS OF LOS ANGELES CITY RESIDENTS TO BE FREE FROM DISCRIMINATION IN ANY FORM BASED ON A PROTECTED STATUS

Section
45.97 Statement of Policy.
45.98 Definitions.
45.99 Employment.
45.100 Rental Housing.
45.101 Business Establishments.
45.102 City Facilities and Services.
45.103 Educational Institutions.
45.104 Advertising.
45.105 Subterfuge.
45.106 Liability.
45.107 Enforcement.
45.108 Limitation on Action.
45.109 Severability.
45.110 Exceptions.

SEC. 45.97. STATEMENT OF POLICY.

After public hearings and receipt of testimony, the City Council finds and declares:

In the city of Los Angeles, with its great cosmopolitan and diverse population, public policy must to the extent possible promote understanding between and among
communities and discourage unlawful discrimination against City residents based on matters such as their race, color, creed, age, national origin, alienage or citizenship status, gender, sexual orientation, disability, marital status, partnership status, caregiver status, any lawful source of income, status as a victim of domestic violence or status as a victim of sex offenses or stalking, whether children are, may be or would be residing with a person or conviction or arrest record;

That the health, safety and economic security of the residents of the City of Los Angeles are served when discrimination and exploitation are discouraged and made violations of City ordinances with remedies easily accessible to those discriminated against and penalties that will discourage the unlawful exploitation of and discrimination against the City’s minority communities;

That President Trump’s termination of the DACA program and other anti-immigrant policies and public statements have increased fear in the immigrant communities, are driving immigrants deeper underground, and making them more vulnerable to illegal exploitation;

That the regulation of immigration and non-citizens’ presence in the United States is an exclusive prerogative of the Federal Government;

That neither private individuals nor the City of Los Angeles has the right or ability to determine whether an individual has a right to be or remain in the United States.

That persons lacking lawful immigration status, or perceived to lack such status, are a discrete and insular minority;

That discrimination against persons lacking lawful immigration status, or perceived to lack such status, exists in the City of Los Angeles and is often a pretext for, or accompanied by, discrimination on the basis of race or religion;

That the City of Los Angeles has a duty to protect and promote public health and safety within its boundaries and to protect its residents against invidious discrimination.

That discrimination against persons within the City of Los Angeles on the basis of their protected status is invidious and injurious to public order and civic tranquility;

That the City of Los Angeles has benefited, and will continue to benefit from the economic and cultural contributions of a wide range of minority groups and marginalized communities;

That individuals experience invidious discrimination in employment, housing, medical and dental services, business establishments, city facilities, city services and other public
accommodations based, in whole or in part, on their protected status, real or perceived;

That such discrimination poses a substantial threat to the health, safety and welfare of the community; and

That the existing state and federal restraints on such discrimination are inadequate to meet the standards of equality this City seeks to achieve.

**SEC. 45.98. DEFINITIONS.**

The following words and phrases, whenever used in this article, shall be construed as defined in this section:

A. **Protected Status:** Shall mean the characteristics of race, color, citizenship, immigration status, national origin, ancestry, religion, age, sex, pregnancy, mental or physical disability, family status, sexual orientation, veteran status, political opinion, genetic information, medical condition, status as a victim of an intrafamily offense, or other immutable characteristic.

B. **Federal Immigration Status:** Shall mean an individual’s right, real or perceived, under the Immigration and Nationality Act, 8 U.S.C. §§ 1101 et seq., to be or remain in the United States.

C. **Business Establishment:** shall mean any entity, however organized, which furnishes goods or services to the general public. An otherwise qualifying establishment which has membership requirements is considered to furnish services to the general public if its membership requirements: (a) consist only of payment of fees; (b) consist of requirements under which a substantial portion of the residents of this City could qualify.

D. **Employer:** Shall mean every person, including any public service corporation and the legal representative of any deceased employer which has any natural person in service.

E. **Housing Services:** Shall mean services connected with the use or occupancy of a rental unit including but not limited to, utilities (including light, heat, water and telephone), ordinary repairs or replacement, and maintenance, including painting. This term shall also include the provision of elevator service, laundry facilities and privileges, common recreational facilities, janitor service, resident manager, refuse removal, furnishings, food service, parking and any other benefits, privileges or facilities.

F. **Rent:** Shall mean the consideration, including any bonus, benefits or gratuity,
demanded or received by a landlord for or in connection with the use or occupancy of a rental unit, including but not limited to monies demanded or paid for the following: meals where required by the landlord as a condition of the tenancy; parking; furnishings; other housing services of any kind; subletting; or security deposits.

G. Rental Units: Shall mean all dwelling units, efficiency dwelling units, guest rooms, and suites in the City of Los Angeles, as defined in Section 12.03 of this Code, rented or offered for rent for living or dwelling purposes, the land and buildings appurtenant thereto, and all housing services, privileges, furnishings and facilities supplied in connection with the use or occupancy thereof, including garage and parking facilities. This term shall not include:

1. Housing accommodations which a government unit, agency or authority owns, operates, or manages, and which are specifically exempted from municipal regulation by state or federal law or administrative regulation.

H. Person: Shall mean any natural person, firm, corporation, partnership or other organization, association or group of persons however organized.

I. City: Shall mean the City of Los Angeles.

SEC. 45.99. EMPLOYMENT.

A. Unlawful Employment Practices. It shall be an unlawful employment practice for any employer or any agent or employee thereof to discriminate or attempt to discriminate against any person with respect to compensation, terms, conditions or privileges of employment on the basis (in whole or in part) on the person’s Protected Status.

B. Bona fide Occupational Qualification Not Prohibited; Burden of Proof.

1. Bona Fide Occupational Qualifications. Nothing contained in this Section shall be deemed to prohibit selection, rejection or dismissal based upon a bona fide occupational qualification.

2. Burden of Proof. Any action brought under this article, if a party asserts that an otherwise unlawful discriminatory practice is justified as a bona fide occupational qualification, that party shall have the burden of proving: (1) that the discrimination is in fact a necessary result of a bona fide occupational qualification; and (2) that there exists no less discriminatory means of satisfying the occupational qualification.
C. Exceptions.

1. Nothing in this section shall be construed to require anyone to refer for employment, hire, or continue to employ an individual in violation of federal law.

2. It shall not be an unlawful discriminatory practice for an employer to observe the conditions of a bona fide employee benefit system, provided such systems or plans are not a subterfuge to evade the purposes of this article.

SEC. 45.100. RENTAL HOUSING.

A. Unlawful Rental Housing Practices. It shall be unlawful for any person having a housing accommodation for rent or lease, or any authorized agent or employee of such person, to do or attempt to do any of the following:

1. Refuse to rent or lease a rental unit, refuse to negotiate for the rental or lease of a rental unit, evict from a rental unit, or otherwise deny to or withhold a rental unit from any person on the basis (in whole or in part) of the person’s Protected Status.

2. Rent or lease a rental unit on less favorable terms, conditions or privileges, or discriminate in the provision of housing services to any person on the basis (in whole or in part) of the person’s Protected Status.

3. Represent to any person that a rental unit is not available for inspection, rental or lease when such rental unit is, in fact, available, on the basis (in whole or in part) of the person’s Protected Status.

4. Make, print, publish, or cause to be made, printed, or published any notice, statement, sign, advertisement, application, or contract with regard to a rental unit that indicates any preference, limitation, or discrimination on the basis of the person’s Protected Status.

B. Exceptions.

1. Owner-occupied. Nothing in this article shall be construed to apply to the rental or leasing of any housing unit in which the owner or lessor or any member of his or her family occupies the same living unit in common with the prospective tenant.

2. Effect on Other Laws. Nothing in this article shall be deemed to permit any rental or occupancy of any dwelling unit or commercial space otherwise prohibited by law.
3. Nothing in this article shall override any just cause for eviction set forth in Rent Stabilization Ordinance.

SEC. 45.101. BUSINESS ESTABLISHMENTS.

A. Unlawful Business Practice. It shall be an unlawful business practice for any person to deny any individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any business establishment including, but not limited to, medical, dental, health care and convalescent services of any kind whatsoever on the basis (in whole or in part) of the person’s Protected Status.

SEC. 45.102. CITY FACILITIES AND SERVICES.

A. Unlawful Service and Facility Practices. It shall be an unlawful practice for any person to deny any person the full and equal enjoyment of, or to impose different terms and conditions on the availability of, any of the following:

1. Use of any City facility or City service on the basis (in whole or in part) of a person’s Protected Status.

2. Any service, program or facility wholly or partially funded or otherwise supported by the City of Los Angeles, on the basis (in whole or in part) of a person’s Protected Status.

This subsection shall not apply to any facility, service or program that does not receive any assistance from the City of Los Angeles or which is not provided to the public generally.

SEC. 45.103. EDUCATIONAL INSTITUTIONS.

A. Unlawful Educational Practices. It shall be an unlawful educational practice for any person to do any of the following:

1. To deny admission, or to impose different terms or conditions on admission, on the basis (in whole or in part) of a person’s Protected Status.

2. To deny any individual the full and equal enjoyment of, or to impose different terms or conditions upon the availability of, any facility owned or operated by or any service or program offered by an educational institution on the basis (in whole or in part) of the person’s Protected Status.

B. Exception. It shall not be an unlawful discriminatory practice for a religious or
denominational institution to limit admission, or give other preference to applicants of the same religion.

SEC. 45.104. ADVERTISING.

It shall be unlawful for any person to make, print, publish, advertise or disseminate in any way any notice, statement or advertisement with respect to any of the acts mentioned in this article, which indicates an intent to engage in any unlawful practice as set forth in this article.

SEC. 45.105. SUBTERFUGE.

It shall be an unlawful discriminatory practice to do any of the acts mentioned in this article for any reason which would not have been asserted, wholly or partially, but for reason of a person’s Protected Status.

SEC. 45.106. PERMITS, LICENSES, FRANCHISES, ETC.

All permits, licenses, franchises, benefits, exemptions, or advantages issued by or on behalf of the government of the City of Los Angeles, shall specifically require and be conditioned upon full compliance with the provisions of this chapter; and shall further specify that the failure or refusal to comply with any provision of this chapter shall be a proper basis for revocation of such permit, license, franchise, benefit, exemption, or advantage.

Referral to licensing agencies.

(a) Whenever it appears that the holder of a permit, license, franchise, benefit, or advantage issued by any agency or authority of the government of the City of Los Angeles is a person against whom the Office has made a finding of probable cause pursuant to § __________, the Office, notwithstanding any other action it may take or may have taken under the authority of the provisions of this chapter, may refer to the proper agency or authority the facts and identities of all persons involved in the complaint for such action as such agency or authority, in its judgment, considers appropriate, based upon the facts thus disclosed to it.

(b) The Commission, upon a determination of a violation of any of the provisions of this chapter by a holder of, or applicant for any permit, license, franchise, benefit, exemption, or advantage issued by or on behalf of the government of the City of Los Angeles, and upon failure of the respondent to correct the unlawful discriminatory practice and comply with its order, in accordance with § __________, shall refer this determination to the appropriate agency or authority. Such determination shall constitute prima facie evidence that the respondent, with respect to the particular business in which the violation was
found, is not operating in the public interest. Such agency or authority shall, upon notification, issue to said holder or applicant an order to show cause why such privileges related to that business should not be revoked, suspended, denied or otherwise restricted.

SEC. 45.107. ENFORCEMENT.

Any resident of the City of Los Angeles may bring a civil action in a court of competent jurisdiction for violation of this article and shall be awarded the penalty set forth in this article and any other legal and/or equitable relief as may be appropriate to remedy the violation. The complainant shall not bring a civil action unless or until the s/he has reported the alleged violation to the HRC and the administrative enforcement process set forth in Section 189.09(A) has been completed or a hearing officer’s decision has been rendered as set forth in Section 189.09(B), whichever is later. The complainant’s civil action must be filed within one (1) year of the later of the completion of the HRC’s enforcement process or the issuance of the hearing officer’s decision.

SEC. 45.108. ADMINISTRATIVE ENFORCEMENT.

A. A complainant alleging a violation of this article may, within one year of the alleged violation or within the time that a reasonable person should have discovered the violation, report the alleged violation to the HRC, which shall investigate the complaint. The HRC, as a part of its investigation, may subpoena records and documents and other items relevant to the enforcement of this article. Whether based upon a complaint or its own investigation of a violation of any of the provisions of this article, where the HRC determines that a person or entity has violated this article, the HRC shall issue a written notice to the offending party or parties, require the them to immediately cure the violation and may impose an administrative fine as set forth in this article.

B. The HRC shall establish rules governing the administrative process for investigation and enforcement of alleged violations and appeal of determinations of violations. The rules shall include procedures for: (i) providing notice of an alleged violation to the alleged offending party or parties; (ii) providing the alleged offending party or parties with the opportunity to respond to the notice; (iii) providing notice to the alleged offending party or parties and to the complainant of the HRC’s determination; and (iv) providing the alleged offending party or parties and the complainant the opportunity to appeal the HRC’s determination to a hearing officer. The hearing officer’s decision shall constitute the City’s final decision, and any review of that decision shall be made by the filing of a petition for writ of mandate in the Superior Court of the County of Los Angeles under Section 1094.5 of the Code of Civil Procedure.

C. The HRC shall maintain a record of the complaints it receives alleging violations of this article and the resolution of complaints. The HRC shall compile a summary of the record of the complaints on an annual basis and report that summary to the City Council.

D. A mediation program shall be established and all complaints shall be mediated before the
Commission commences a full investigation. During the mediation the parties shall discuss the issues of the complaint in an effort to reach an agreement that satisfies the interests of all concerned parties. The Commission shall grant the parties up to 45 days within which to mediate a complaint. If an agreement is reached during the mediation process, the terms of the agreement shall control resolution of the complaint. If an agreement is not reached, the Commission shall proceed with an investigation of the complaint.

**SEC. 45.110. PENALTIES AND ADMINISTRATIVE FINE SCHEDULE.**

A. Penalties and administrative fines for an offending party’s violation of any provision of this article, shall be up to $10,000 for the first violation, up to $20,000 for the second violation and up to $50,000 for the third and subsequent violations.

B. The amount of the penalty or administrative fine imposed may be based on the willfulness of offense and other material factors as determined by the HRC.

C. For purposes of determining the penalty or administrative fine to be imposed under this article, violations may be treated as separate violations and subject to the penalty or administrative fine amounts set forth therein.

D. Administrative fines shall be payable to the City of Los Angeles and due within 30 days from the date of notice to the offending party. The failure of any Offending party to pay an administrative fine within 30 days shall result in the assessment of a late fee. The amount of the late fee shall be ten percent of the total amount of the administrative fine assessed for each month the amount is unpaid, compounded to include already accrued late administrative fines that remain unpaid.

E. The failure of any Offending party to pay amounts due to the City under this article when due shall constitute a debt to the City. The City may file a civil action or pursue any other legal remedy to collect amounts due.

F. Any person who violates any of the provisions of this article or who aids in the violation of any provisions of this article shall be liable for, and the Human Rights Commission (“HRC”) or a court shall award to the individual whose rights were violated, actual damages, punitive damages in appropriate cases, costs, and attorney's fees.

G. Nothing in this article shall be interpreted as restricting, precluding, or otherwise limiting a separate or concurrent criminal prosecution under the Municipal Code or any applicable state or federal law.

H. Criminal Misdemeanors: Subsequent violations of this article may be considered a misdemeanor. Violators may be subject to up to a $1,000 fine and 6 months imprisonment for each day they are in violation of any offense.
I. Any person who commits, or proposes to commit, an act in violation of this article may be enjoined therefrom by the HRC or a court of competent jurisdiction. Action for Injunction under this subsection may be brought by any aggrieved person, by the City Attorney, or by any person or entity which will fairly and adequately represent the interests of the protected class.

J. Nothing in this article shall preclude any aggrieved person from seeking any other remedy provided by law.

SEC. 45.111. IMPLEMENTATION.

The HRC may promulgate guidelines and rules consistent with this article for the implementation of the provisions of this article. Guidelines and rules shall have the force and effect of law.

SEC. 45.112. OTHER LEGAL REQUIREMENTS.

This article provides the minimum requirements pertaining to the protection of complainants and shall not be construed to preempt, limit or otherwise affect the applicability of any other law, regulation, requirement, policy or standard, or, with regard to employment, any provision of a collective bargaining agreement, that provides for greater or other rights of or protections for complainants. This provision shall apply both to laws, regulations, requirements, policies, standards and collective bargaining agreements in existence at the time the article becomes operative, and to those that come into existence thereafter.

SEC. 45.113. CONFLICTS.

Nothing in this article shall be interpreted or applied so as to create any requirement, power or duty in conflict with federal or state law. Specifically, the requirements of this article are not intended to limit, restrict or nullify any duty, right or obligation of an Applicant or an Offending party under the Title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. §2000e, et seq.) and the enforcement guidelines promulgated by the U.S. Equal Employment Opportunity Commission.

SEC. 45.114. AUTHORITY.

This article is adopted pursuant to the police powers vested in the City under the Constitution of the State of California and the City Charter, and is intended to promote the general welfare. The City is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which the City or its officers or employees are liable for damages of any kind, including monetary damages, to any person who claims that such breach proximately caused injury. This article does not create a legally enforceable right against the City.
SEC. 45.115. LIMITATION ON ACTION.

Actions under this article must be filed within one year of the alleged discriminatory acts or from the date on which the alleged discriminatory act was discovered.

SEC. 45.116. SEVERABILITY.

If any part or provision of this article or the application thereof to any person or circumstance, is held invalid, the remainder of the article, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this article are severable.

SEC. 45.117. EXCEPTION.

No part of this Article shall be interpreted or applied so as to create any requirement, power or duty in conflict with state or federal law.

SEC. 45.118. The City Clerk shall certify to the passage of this article and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles, or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that the foregoing ordinance was introduced at the meeting of the Council of the City of Los Angeles on _______________, and was passed at its meeting of _______________.

City Clerk

By __________________________
   Deputy

Approved _____________________

_________________________________
   Mayor

Approved as to Form and Legality
Michael N. Feuer, City Attorney
APPENDIX

8 U.S. Code § 1373 - Communication between government agencies and the Immigration and Naturalization Service

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.

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:
Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.
Maintaining such information.
Exchanging such information with any other Federal, State, or local government entity.

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.