

Offered by Councilor Josh Zakim



CITY OF BOSTON

IN THE YEAR TWO THOUSAND NINETEEN

BOSTON TRUST ACT AMENDMENTS

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, Protecting the civil rights, civil liberties, and safety of residents and visitors alike are core values of the City of Boston; *and*

WHEREAS, On August 20, 2014, the Boston Trust Act ("Trust Act") was unanimously passed by the City Council and signed into law by Mayor Martin J. Walsh; *and*

WHEREAS, It is important that the Trust Act be updated to further these goals; **NOW, THEREFORE BE IT**

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

That the City of Boston Code, Ordinances is hereby amended by striking Chapter 11-1.9 in its entirety and replacing it with the following amended Boston Trust Act:

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 United States Code 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) “Immigration and Customs Enforcement” or “ICE,” means the federal agency whose enforcement and removal division enforces federal immigration laws, including issuance and action on civil detainers and detainer requests.

(e) “ICE-HSI” means the Department of Homeland Security Investigations division of ICE whose purpose is to work alone or in concert with other federal, state, and local law enforcement to investigate and enforce laws prohibiting human smuggling and trafficking; narcotics and weapons smuggling and trafficking; transnational gang activity; cybercrimes; money laundering, financial crimes, bulk cash smuggling; document and benefit fraud; human rights violations; commercial fraud and intellectual property theft; export enforcement; and international art and antiquities theft.

(f) “ICE administrative warrant” means a warrant issued by a federal immigration officer, not a judicial officer, that does not confer detention authority on a local jurisdiction.

(g) “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.

(h) “Personal Information” means any information that is maintained by an agency that identifies or describes an individual, that can be used, either alone or in combination with other information, to identify individual subjects, such as his or her name, social security number, physical description, home address, and/or work address.

(i) “Immigration Enforcement” means identifying, arresting, detaining or assisting in the arrest or detention of any person solely on the basis of their immigration status or a suspected violation of federal civil immigration law.

Section 2. Detainer Requests.

A law enforcement official shall not detain an individual solely on the basis of a civil immigration detainer request or an ICE administrative warrant after the individual is eligible for release from custody, unless ICE has a criminal warrant, issued by a judicial officer, for the individual.

Section 3. Reporting.

No later than December 31 of each 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, 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, organized by individual case.

Section 4. Law Enforcement.

(a) A law enforcement official or an employee of a city department, agency or commission, shall not:

(1) Use agency or department moneys or personnel to interrogate, detain, or arrest persons for immigration enforcement purposes, that are otherwise the responsibility of the federal Immigration and Customs Enforcement agency, including any of the following:

(A) Inquiring of an individual his, her, or their immigration status.

(B) Detaining an individual solely on the basis of a civil immigration detainer request.

(C) Providing personal information, as defined in section 1, or regarding a person's release date or time to the federal Immigration and Customs Enforcement agency.

(D) Providing personal information, as defined in section 1, or regarding a person's release date or time to ICE-HSI solely for the purpose of enforcing civil violations of U.S. immigration laws.

(E) Making arrests based solely on ICE administrative warrants including administrative warrants after the individual is eligible for release from custody.

(F) Performing the functions of an immigration officer.

(2) Transfer an individual to immigration authorities unless authorized by a judicial warrant or other judicial order.

(b) Notwithstanding the limitations in subdivision (a), this section does not prevent any Boston law enforcement official or an employee of a city department, agency or commission from doing any of the following:

(1) Investigating, enforcing, or detaining upon reasonable suspicion of, or arresting for a criminal violation of, Section 1326(a) of Title 8 of the United States Code that may be subject to the enhancement specified in Section 1326(b)(2) of Title 8 of the United States Code and that is detected during an unrelated Boston Police activity. Any arrests executed under this provision by any Boston law enforcement official shall be included in the annual report of the Boston Police Commissioner to the Clerk of the City of Boston, in accordance with Section 3 of this ordinance.

(2) Responding to a request from ICE-HSI for information about a specific person's criminal history, including, but not limited to, previous criminal arrests, convictions, or CORI, where otherwise permitted by state law.

(3) Conducting enforcement or investigative duties associated with partnerships with federal authorities or task forces, including the sharing of confidential information with the Boston Police or other agencies for purposes of joint investigations, so long as the primary purpose of the partnership or task force is not to enforce civil violations of U.S. immigration laws.

(4) Certifying an individual who has been identified as a potential crime or trafficking victim for a T or U Visa pursuant to Section 1101(a)(15)(T) or 1101(a)(15)(U) of Title 8 of the United States Code.

(5) Enforcing Section 922(d)(5) of Title 18 of the United States Code.

(6) An inquiry into an individual's citizenship status by the City of Boston Elections Commission to determine their eligibility to vote in local, state, and federal elections.

(c) This section does not prohibit or restrict any government agency from complying with Sections 1373 and 1644 of Title 8 of the United States Code.

(d) Nothing in this section shall prohibit the Boston Police from asserting its own jurisdiction over criminal law enforcement matters.

(e) Within six months of the passage of this ordinance, the Boston Police Department shall incorporate the requirements of this ordinance into its regular training for all officers.

Section 5. Effective Date.

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