

Ordinance 0004-26 – Immigration Enforcement – Proposed

An ordinance to create Chapter 63, Immigration Enforcement, of the Municipal Code of the City of Racine, Wisconsin.

The Common Council of the City of Racine, Wisconsin, ordains as follows

Part 1: Chapter 63, Immigration Enforcement is created.

Part 2: Chapter 63, Section 63-1, is created as follows:

Sec. 63-1. – Findings and purpose.

- a. The common council declares that the City of Racine is committed to the principle that all people in the city can live with respect, safety, and dignity; and
- b. the city is home to a rich and diverse population whose residents, regardless of national origin or language, contribute to the city's economic strength, cultural vibrancy, and civic life; and
- c. immigrants and their families have helped build and sustain the city's economy, schools and neighborhoods, making essential contributions to business, public service, and community life; and
- d. media reports and community accounts in other cities have documented actions by federal immigration enforcement agencies, including near schools, workplaces and places of worship, creating fear and trauma among residents; and
- e. the common council recognizes that civil immigration enforcement in the United States is principally a responsibility of the federal government, and that the federal government has established statutory and regulatory frameworks for the investigation, apprehension, detention, and removal of noncitizens under federal immigration law, including programs through which state and local entities may, but are not required to, enter into agreements to perform designated federally-authorized immigration functions; and
- f. the common council further recognizes that, while it may cooperate with federal law enforcement agencies as required by applicable federal and state law, the City is not obligated to engage in or prioritize civil immigration enforcement activities that are not mandated by law, and that the City retains authority, consistent with applicable law, to determine the allocation and prioritization of its own resources, including the time and attention of its officers and employees and the use of City equipment, facilities,

information, and funds; and

- g. the common council finds that the use of City resources primarily for civil immigration enforcement where not legally required and not directly related to the City's local public safety or other municipal objectives can undermine community trust, discourage cooperation with City departments, divert limited municipal resources from core local functions, and thereby adversely affect the health, safety, and welfare of the city and its residents; and
- h. using City-owned properties for civil immigration enforcement can make residents fearful and discourage them from accessing essential services; and
- i. City-owned or controlled parking lots, ramps, vacant lots, garages, and parks are not open to the public without restrictions; and
- j. the unauthorized use of City resources, property, or personnel to facilitate civil immigration enforcement actions interferes with the City's authority over, and its use of, its own resources, property, and personnel; and
- k. the common council finds that community safety is enhanced when persons exercising law enforcement authority are readily identifiable to the public during routine interactions, enforcement actions, and crowd-management activities.
- l. the common council further finds that masked and unidentified officers engaging with the community can increase fear, confusion, and the risk of escalation, and can impede accountability and public trust.
- m. the common council desires to adopt a clear policy statement, consistent with applicable law, that the City will prioritize its resources for municipal purposes and local public safety objectives and will not, except as required by law or necessary for the performance of its municipal functions, use such resources primarily to support or effectuate federal civil immigration enforcement activities; and
- n. the common council intends that this chapter be interpreted and applied in a manner consistent with the Constitution and laws of the United States and the State of Wisconsin, including any statutes or regulations of statewide concern that with uniformity affect every city, and does not intend by this ordinance to direct, require, or authorize any violation of such federal or state laws, or to impede or obstruct any federal or state officer acting within the scope of lawful authority; and
- o. the common council recognizes that nothing in this chapter shall lawfully prevent City officers or employees from complying with duly issued court

orders, warrants, or other legal process, or from fulfilling duties that are expressly mandated by federal or state law, and that nothing in this chapter is intended to provide or confer any private right or cause of action, or to create any enforceable legal status, entitlement, or benefit, substantive or procedural, against the City, its officers, employees, or agents; and

- p. the common council finds and determines that adoption of this chapter is an exercise of the City's authority over local affairs and government, and over the organization, administration, and use of City departments, personnel, property, and finances, and is reasonably related to the protection of the public health, safety, welfare, and good order of the City and its inhabitants.

Part 3: Chapter 63, Section 63-2 is created as follows:

Sec. 63-2. – Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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.

Civil immigration enforcement means any investigation, arrest, detention, or surveillance conducted for the purpose of enforcing federal civil immigration laws, including but not limited to alleged violations of the Immigration and Nationality Act that are civil in nature, and any other activities, whether lawful or unlawful, that are undertaken pursuant to civil immigration enforcement authority or to a claim of purported civil immigration enforcement authority.

Civil immigration law means the body of federal statutes, regulations, and administrative provisions governing civil immigration status, admissibility, removability, detention, and related administrative proceedings, but does not include the investigation or prosecution of criminal offenses under federal or state law.

Face covering or mask means any device, garment, or material that substantially conceals the wearer's face such that the wearer is not readily identifiable by facial features.

Immigration authority means any officer, employee, or agent of a federal, state, or other governmental agency who is engaged primarily in the enforcement of civil immigration law, including but not limited to officers of United States Immigration and Customs Enforcement and United States Customs and Border Protection,

when acting in such capacity.

Immigration detainer means an official request issued by the United States Immigration and Customs Enforcement Agency and shall include any other federal agency, or any successor agency, charged with the enforcement of civil immigration laws.

Staging area means an area that is used to assemble, mobilize, and deploy vehicles, equipment, or materials, and related personnel, for the purpose of carrying out civil immigration enforcement operations.

Judicial warrant means a warrant based on probable cause and supported by oath or affirmation and signed by a federal or state judge or magistrate authorizing law enforcement to take specific action, such as entry, search, or arrest.

Law enforcement officer means any sworn officer or agent exercising law enforcement authority within the city, including City officers and officers of other jurisdictions operating within the city.

Municipal resources means City funds, City-owned or City-leased property, equipment, or facilities, the compensated time and efforts of City officers or employees while on duty or otherwise being compensated by the City, and City-controlled records, databases, and information systems, but does not include general public access to City property or facilities that are generally open to the public on equal terms.

Performance of duties means engaging in law enforcement activity in the city, including but not limited to stops, detentions, arrests, searches, crowd management, execution of warrants, and other enforcement or investigative actions involving contact with members of the public.

Undercover operation means an operation in which an officer's identity as law enforcement is intentionally concealed for investigative purposes.

Safety need means a specific, articulable need to use a face covering to reduce the risk of physical harm, including protection from airborne hazards, chemical agents, smoke, debris, or other comparable hazards.

Part 4: Chapter 63, Section 63-3 is created as follows:

Sec. 63-3. - Civil immigration enforcement actions – federal responsibility.

This section shall be construed and applied consistent with the Constitution and laws of the United States and the State of Wisconsin. Nothing in this section shall be interpreted to prohibit, restrict, or discourage conduct or communications that are required or authorized by federal or state law, by judicial process, or by a valid court order.

- (a) Except for the reasonable period necessary to determine whether independent legal authority exists under federal or state law for continued detention, including investigating whether any of the circumstances described in subsection (d) exist, no City officer, employee, or agent shall:
- (1) arrest, detain or continue to detain a person 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;
 - (2) arrest, detain, or continue to detain a person based solely upon an administrative warrant issued for an alleged civil immigration violation; or
 - (3) detain, or continue to detain, a person based upon an immigration detainer, when such immigration detainer is based solely on a violation of a civil immigration law.
- (b) Unless a City officer, employee, or agent is acting pursuant to a legitimate law enforcement purpose that is unrelated to the enforcement of a civil immigration law, no City officer, employee, or agent shall:
- (1) provide personnel, equipment, facilities, or other municipal resources to facilitate access by an immigration authority beyond that otherwise required by federal or state law or judicial process;
 - (2) make municipal facilities available for activities undertaken primarily for civil immigration enforcement purposes except where required by law or authorized by written agreement approved by the common council or other lawful authority; or
 - (3) expend municipal resources primarily to assist in civil immigration enforcement activities unless such assistance is required by federal or state law, judicial process, or is reasonably necessary to accomplish a legitimate local law enforcement objective or voluntarily approved by the chief of police or other authorized City official when reasonably determined to further a legitimate municipal public safety objective.
- (c) Nothing in this section prohibits communications with federal, state, or local law enforcement agencies that are reasonably necessary to determine the legal or factual basis for a request, evaluate the City's legal obligations, determine the appropriate governmental response, determine the nature of the underlying matter, or determine the authority under which the request is made.
- (d) This section shall not apply when an investigation conducted by a City officer, employee, or agent indicates that the subject of the investigation:

- (1) has an outstanding criminal warrant;
- (2) has been convicted of a felony in any court of competent jurisdiction;
- (3) is a defendant in a criminal case in any court of competent jurisdiction where a judgment has not been entered and a felony charge is pending;
- (4) has been identified as a known gang member either in a law enforcement agency's database or by their own admission;
- (5) is otherwise subject to detention, arrest, or transfer pursuant to federal or state law or a judicial warrant; or
- (6) compliance is required by federal or state statute or by order of a court of competent jurisdiction; or
- (7) cooperation is reasonably necessary to protect against an imminent threat to public safety or to prevent death or serious bodily harm.

Part 5: Chapter 63, Section 63-4 is created as follows:

Sec. 63-4. - Prohibition on the use of City property for civil immigration enforcement activities

- a. No City-owned or controlled parking lot, ramp, vacant lot, park, or garage shall be used as a staging area, processing location, or operations base for civil immigration enforcement actions.
- b. Non-public areas of City-owned or controlled buildings shall not be used for purposes of civil immigration enforcement.
- c. Exceptions.
 - i. Subsections a. and b. shall not apply to property that is subject to an existing lease or concession agreement to which the City is a party and is not intended to, and shall not be interpreted to, interfere with any such lease or agreement.
 - ii. Subsections a. and b. shall not apply to property owned by the federal government and operated by or leased to the City.
 - iii. Subsections a. and b. shall not be construed as restricting or interfering with the execution of court orders or judicial warrants, or the enforcement of criminal law, nor as limiting the rights of any person or entity under state or federal law.

Part 6: Chapter 63, Section 63-5 is created as follows:

Sec. 63-5. - Prohibition on Mask Use by Law Enforcement while Performing Duties

- a. Except as provided in this section, law enforcement officers shall not wear a face covering while performing duties in the City when the officer is engaged in direct contact with members of the public or is exercising enforcement authority in a manner reasonably likely to be perceived by the public as an assertion of police power.
- b. Exceptions. The prohibition of mask use by law enforcement officers while performing duties does not apply under the following circumstances:
 - i. During undercover operations.
 - ii. Where and when a safety need exists.
 - iii. When exigent circumstances require immediate action and the face covering is reasonably necessary to address an imminent threat to safety.
- c. Identification and accountability when an exception exists. When an officer wears a face covering as required under this section other than during an undercover operation, the officer shall, to the extent practicable and consistent with safety, ensure that the officer's agency affiliation and badge number or other unique identifier are clearly displayed on the officer's outer garment.

Part 7: Chapter 63, Section 63-6 is created as follows:

Sec. 63-6. - Designation of the City as a Safe Space for Immigration Enforcement Purposes.

The City is hereby designated and identified as a safe space for immigration enforcement purposes, meaning that, to the extent permitted by applicable federal and state law, the City shall prioritize the use of municipal resources for municipal purposes and local public safety objectives and shall not use such resources primarily to support or effectuate civil immigration enforcement activities.

- (a) Requesting information prohibited. No City officer, employee, or agent 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 Wisconsin statute, federal law, or court decision. Notwithstanding this provision, the city attorney may investigate and inquire about immigration status when relevant to potential or actual litigation or an administrative proceeding in which the City is or may be a party.
- (b) Disclosing information prohibited. Except as otherwise provided under applicable state or federal law, no City officer, employee, or agent shall disclose information regarding the citizenship or immigration status of any person unless required to do so by legal process or such disclosure has been authorized in writing by the individual to whom such information pertains, or if such individual is a minor or is otherwise

not legally competent, by such individual's parent or guardian.

- (c) Conditioning benefits, services, or opportunities on immigrant status prohibited. No City officer, employee, or agent 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 decision.

Part 8: Chapter 63, Section 63-7 is created as follows:

Sec. 63-7. - No private cause of action.

This chapter does not create or form the basis for liability on the part of the City, its officers, employees, or agents. The exclusive remedy for violation of this chapter by the City shall be through the City's disciplinary procedures for officers and employees under regulations including but not limited to the City's personnel rules, union contracts, or any other City rules and/or regulations.

Part 9: Chapter 63, Section 63-8 is created as follows:

Sec. 63-8. – Construction; consistency with state law

- a. This chapter is adopted pursuant to the City's authority to act for the government and good order of the City and for the health, safety, and welfare of the public, and to carry out its powers by regulation and other necessary or convenient means, subject to applicable law.
- b. This chapter shall be construed and applied consistent with Wisconsin Constitution article XI, section 3, including the limitation that municipal action is subject to enactments of the Legislature of statewide concern.
- c. This chapter is intended to be applied in a manner that does not infringe the spirit of state law or the general policy of the state.

Part 10: Chapter 63, Section 63-9 is created as follows:

Sec. 63-9. – 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 common council that this chapter would have been adopted had such invalid provision, clause, section, part or application not been included herein.

Part 11: This ordinance shall take effect upon passage by a majority vote of the members-elect of the City of Racine Common Council and publication or posting as required by law.

Fiscal Note: N/A

Pursuant to Wisconsin Statutes section 62.09(8)(c), the mayor shall have the veto power as to all acts of the Common Council, except such as to which it is expressly or by necessary implication otherwise provided. All such acts shall be submitted to the mayor by the clerk and shall be in force upon approval evidenced by the mayor's signature, or upon failing to approve or disapprove within five days, which fact shall be certified thereon by the clerk. If the mayor disapproves the mayor's objections shall be filed with the clerk, who shall present them to the council at its next meeting. A two-thirds vote of all the members of the council shall then make the act effective notwithstanding the objections of the mayor.