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# Model Ordinance: Local Civil Rights Restoration Act

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This model legislation's sections include the following:

- Limits on intelligence collection and surveillance to functionally restore the Fourth Amendment's warrant requirement;
- Limits on profiling according to political speech or activity;
- A prohibition on profiling according to race, religion, country of origin, or gender;
- Data collection and disclosure requirements to ensure transparency of potential profiling;
- A prohibition on federal immigration enforcement operations by local officials; and
- A provision for a civil action and damages to enable the measure's provisions to be enforced by aggrieved individuals acting in the public interest.

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**More information: <http://constitutioncampaign.org/lcrra>**

*Ordinance to restore Fourth Amendment protections and ensure the focus of local law enforcement agencies on their core public safety mission by limiting their surveillance, intelligence collection, and immigration enforcement activities, and ensuring transparency into potential profiling by race, religion, or national origin*

Whereas [list local law enforcement agencies] (“local law enforcement agencies”) are accountable to this municipality; responsible for its public safety while granted limited resources; and charged with a mission to serve and protect its law-abiding residents, rather than to monitor, harass or intimidate them;

Whereas the Constitution and Bill of Rights ensure the rights of law-abiding Americans to be free from arbitrary state scrutiny, surveillance, searches, interrogations, seizures, or arrest;

Whereas public trust in law enforcement officers, and their reciprocal respect for the rule of law, are vital to promoting public safety;

Whereas federal agencies responsible for collecting domestic intelligence, such as the Federal Bureau of Investigations (“FBI”), have repeatedly and systematically exceeded their authorities, violated the privacy and First Amendment rights of law-abiding Americans and even veterans subjected to unjustified and unreasonable surveillance;

Whereas oversight by neither the Congress nor the Article III Judiciary has achieved transparency into the expanding array of domestic spying and surveillance programs and policies pursued by federal agencies, with mounting support from local agencies;

Whereas the Inspector General of the Department of Homeland Security (“DHS”) found in March 2010 that local immigration enforcement under 287(g) of the Immigration and Nationality Act has led to rampant racial profiling and widespread violations of the rights of US citizens, and documents obtained from Immigration and Customs Enforcement (“ICE”) and the FBI in June 2011 prove that the agencies colluded to mislead local jurisdictions about the Secure Communities Initiative;

Whereas several States, including Arizona and Georgia, have sought to institutionalize suspicion by association by requiring incremental scrutiny of individuals, including US citizens, based on their national origin;

Whereas federal legislation needed to curb rule of law abuses—such as the JUSTICE Act, the End Racial Profiling Act, and comprehensive immigration reform—has not been enacted and does not appear near the top of the national agenda;

Whereas the ongoing secrecy surrounding domestic surveillance activities has precluded the effective operation of democratic checks and balances; and

Whereas the experiences of localities across the United States demonstrate conclusively that allowing local law enforcement agencies to focus on their core public safety mission (without the distraction or counter-productive pursuit of federal immigration enforcement or intelligence collection mandates) enhances public safety,

BE IT RESOLVED:

That [the City of \_\_\_\_\_] remains firmly committed to the protection of civil rights and civil liberties for all people, and enacts this ordinance to secure those aims.

## I. Definitions

- A. "Observation" or "monitoring" means surveillance, monitoring, or data collection facilitated by human intelligence, undisclosed participation by law enforcement agents or informants, warrantless wiretaps, remote or live imaging, data recorded from cellular telephones, internet, and other telecommunications devices, or other routine or spontaneous investigative activities.
- B. "Data Centers" means any facilities accepting public funds to facilitate the collection, dissemination, or analysis of intelligence data concerning non-criminal behavior collected through observation by federal, state, or local law enforcement agencies.
- C. "Non-Criminal Intelligence Information" means information about activities that are not criminal in nature, collected outside the context of an investigation of a criminal act that has occurred.
- D. "Local Law Enforcement Agencies" include [\_\_\_\_\_].
- E. "Investigatory Activity" means any stop, interrogation, search, seizure, use of force, or arrest.
- F. "Frisk" includes a pat down.

## II. Safeguards on Surveillance

- A. **Information Collection:** Law enforcement agents shall conduct searches of individuals in this jurisdiction only on the basis of probable cause that a criminal offense has been committed, or on a basis previously held by a court to be consistent with rights under the Constitutions of the United States and State of [State].
  - 1. In accordance with federal law, Reasonable Suspicion that a criminal offense has been committed may justify a cursory frisk of outer clothing, or the collection or retention of intelligence information related to suspected criminal activity.
  - 2. Local law enforcement agencies shall not engage in efforts to collect or retain information about the lawful activities of individuals or groups without reasonable suspicion that such activities relate to criminal activity.
  - 3. Observation or searches unsupported by individualized suspicion are per se unreasonable and may not provide a basis for arrest, prosecution, or the collection or retention of intelligence information.
  - 4. Local law enforcement agencies may not pursue, engage in, or support either electronic or physical surveillance activities unless supported by reasonable

suspicion that a criminal offense has been or may be committed, or a judicial warrant specific to the time, place, and target of such surveillance.

5. Intelligence collection activities unsupported by reasonable suspicion that a criminal offense has been or may be committed, or a judicial warrant, are per se unreasonable and prohibited.

#### **B. Information Dissemination:**

1. Local law enforcement agencies may not supply Intelligence Information to federal officials absent reasonable suspicion that a criminal offense has been or may be committed. Incident reports concerning allegedly suspicious activities may not be reported to databases directly or indirectly accessible by federal officials absent reasonable suspicion that a criminal violation has been or may be committed.

2. Intelligence Information may not be disseminated to military or private sector organizations. Intelligence related to a criminal investigation that has been collected by local authorities may be disseminated only to law enforcement agencies; local authorities may not include military or private sector actors, nor Data Centers (see I.B.) through which military or private sector actors could gain access directly or indirectly to such data.

3. Local law enforcement agencies shall **not participate in inter-agency bodies** that disseminate non-criminal intelligence information unless those bodies comply with 28 C.F.R. Part 23 and its requirements regarding information receipt, maintenance, security, and dissemination.

### **III. Limits on Undercover Infiltration and Political Profiling**

A. Local law enforcement authorities shall not engage in undercover infiltration, or undisclosed participation of any kind, in groups or organizations pursuing First Amendment-protected (speech, political or religious) activity, absent probable cause that a criminal offense may be committed.

B. Any investigation involving religious institutions or political organizations shall be pursued through the most minimally invasive methods available, and shall require active and recurring internal oversight.

C. Local law enforcement authorities may not select individuals, organizations, associations, or institutions for any investigatory activity, to any extent, on the basis of their First Amendment-protected (speech, political or religious) activities.

D. Local authorities shall not collect, disseminate or maintain non-criminal Intelligence Information about the political, religious or social views, associations, or activities of any individual or any group, association, corporation, business, partnership, or other organization unless such information relates to criminal activity and there is reasonable suspicion to believe that the Subject may be involved.

#### IV. Profiling According to Race, Religion, National Origin, or Political Point of View

A. Local law enforcement agents and agencies shall not select individuals for observation, interrogations, searches, frisks, or arrests based in any part on the individual's race, ethnicity, country or region of origin, or religion (except where trustworthy information relevant to the locality and timeframe links an individual of a particular race, ethnicity, country or region of origin, or religion to a specific criminal incident or scheme, and other factors support reasonable suspicion).

B. Local law enforcement agents and agencies shall not demand an individual's identification absent reasonable suspicion of criminal activity.

C. Measures to Verify Potential Profiling According to Race, Religion, or National Origin: Following any observation, stop, frisk, search, interrogation, or arrest of any individual, the agent initiating that activity shall record the following information about the Subject on a standardized Encounter Form:

1. the date, time, and location of the investigatory activities;
2. the particular investigatory tactics employed;
3. the amount of time, if any, during which the subject(s) of the investigatory activities was detained;
4. a description of any frisk or search, including the areas, vehicles, materials, or units of stored (physical or electronic) information searched;
5. whether force was employed, and if so, for what reason, of what sort, and the effect of such force on the subject(s);
6. the nature of the suspicion prompting the investigatory activity, and the specific basis or bases for that suspicion;
7. the approximate age of the subject, as perceived by the officer;
8. the sex and gender of the subject, as perceived by the officer;
9. the country or region of origin of the subject, as perceived by the officer;
10. the religion of the subject, as perceived by the officer.
11. the race or ethnicity of the person observed, searched, or interrogated, as perceived by the officer.
12. with what criminal violation, if any, any subject was ultimately charged;

##### A. Privacy.

1. The identification of characteristics described in sections IV(A)(7-11) above (e.g., age, sex, gender, country or region of origin, religion, and race or ethnicity)

shall be based on the observation and perception of the law enforcement agent conducting the stop, search, or other investigatory activity. A subject of investigatory activities shall not be asked to provide such information.

2. Data collected pursuant to IV(C) shall (i) exclude personally identifiable information; (ii) be stored separately from databases accessible to operational law enforcement personnel from any agency; (iii) be maintained securely, protected by encryption or other security measures to protect against theft or unauthorized access, and; (iii) be audited and analyzed on an annual basis by an independent entity responsible for analysis.

**B. Accountability.** Encounter Forms shall be identifiable by sequential serial numbers. Those assigned to particular agents will be tracked and recorded. Agents shall deliver copies of each Encounter Form to the local law enforcement agency, which shall periodically deliver them to an independent entity responsible for analysis.

**C. Transparency.**

1. Subjects of investigatory interactions such as stops, frisks, interrogations, searches or arrests shall receive copies of the Enforcement Form relating to their interaction. Encounter Forms shall include guidance on how to file a complaint about, or commendation of, the agent with whom they interacted.

2. Subjects of observation or monitoring shall not receive such documentation, but monitoring activities shall be documented through Encounter Forms, and subjected to an internal audit to ensure compliance.

3. The information collected through Encounter Forms shall be aggregated and publicly disclosed every six months in a report to the [local legislative body] including statistics reflecting the rates at which Subjects of various races, religions, and national origins are represented at each investigatory stage.

4. The report, as well as individual Encounter Forms, shall also be made available to litigants who allege discriminatory profiling (See Section VIII), or defendants seeking to exclude from prosecution evidence obtained through a potentially unconstitutional search.

**V. Limits on Local Immigration Enforcement Activities**

**A. Local law enforcement agencies** shall not participate in activities related to enforcing federal immigration laws.

1. **Local immigration enforcement.** Local law enforcement agencies shall not engage in agreements with the Department of Homeland Security (“DHS”) components, including Immigration and Customs Enforcement (“ICE”), to facilitate the enforcement of federal immigration law. Programs for which such engagement is prohibited include, but are not limited to: agreements under section 287(g) of the Immigration and Nationality Act; the Secure Communities Initiative; the Criminal Alien Program; and Next Generation Identification.

2. **Detainers.** Facilities under the jurisdiction of this body shall not be used to detain individuals held for suspected immigration violations. Law enforcement agents shall not make arrests or detain individuals based on administrative warrants or requests by federal agencies for removal, including those generated by the federal Immigration and Customs Enforcement agency (ICE) or the National Crime Information Center (NCIC) database. Local officials shall not hold individuals based on detainers requested by ICE.

3. **Sharing Arrest Data.** Local law enforcement agencies may not share arrest data (including but not limited to fingerprints) with state or federal counterparts, including the Federal Bureau of Investigations (FBI), unless it relates to suspected violent felonies. Data pertaining to individuals suspected of misdemeanors or nonviolent felonies shall not be shared with other law enforcement agencies absent an express duty under federal or state law.

#### B. Privacy.

1. Local law enforcement authorities shall not monitor, stop, detain, question, interrogate, or search a person solely for the purpose of determining that individual's immigration status. The use of an otherwise valid criminal investigation or arrest as a pretext to ascertain information about an individual's immigration status is prohibited.

2. Local law enforcement authorities shall not inquire about the immigration status of any crime victim or witness, or suspects of alleged misdemeanors, nor shall they refer such information to federal immigration enforcement authorities.

3. Local law enforcement authorities shall not initiate a criminal investigation based solely on information or suspicion that an individual has committed a civil violation by residing in the United States without proper authorization.

4. Local law enforcement agencies shall tow a vehicle of an unlicensed driver only after granting an opportunity to allow the unlicensed driver to secure his or her vehicle on the scene, or to contact another source to recover the vehicle

### VI. Limits on Cooperation with Federal or Military Officials

A. Activities undertaken by local law enforcement agencies in coordination with federal counterparts, including joint intelligence analysis activities involving Data Centers or federal intelligence agencies, shall be strictly limited to:

1. Criminal law enforcement, or
2. Disaster preparedness and recovery activities.

B. Local law enforcement agencies may coordinate their activities with military or National Guard personnel only to the extent their activities relate specifically to disaster preparedness and recovery.

C. **Disaster Response.** Under no circumstances will due process be suspended: even in the event that a natural disaster precludes the normal operation of courts, local agencies or deputized private contractors shall not be authorized to impose summary penalties without judicial process (as, for example, occurred in New Orleans in 2005).

## VII. Limits to Protect Dissent

D. Law enforcement activities undertaken in the context of political demonstrations, or other activities protected by the First Amendment, shall be subject to the following limitations:

1. **Free Speech zones:** No fences shall be erected, or exclusion zones delineated, that curtail public access to public streets.
2. **Mass arrests:** Arrests of individuals engage in First Amendment protected activity must rely on articulable facts supporting probable cause to believe that that every individual subjected to arrest committed a criminal offense, beyond their presence in a particular location at a particular time. Arrests to pre-empt criminal activity are not authorized. Any individual arrested for failure to obey a time, place, or manner restriction must be allowed an opportunity to depart from the area.
3. **Police checkpoints:** No screening checkpoint shall subject any individual to a search absent reasonable suspicion of criminal activity.
4. **Condition of confinement** during mass arrests: Individuals subjected to arrest for participation in First Amendment protected activity shall not be subjected to shackling absent a specific threat of violence, shall be allowed access to counsel within six hours, and shall be given a copy of any incident report relating to their arrest to use for exculpatory purposes.
5. **Use of force:** no non-lethal weapons may be used until after an act of proportionate violence is committed, nor may undercover law enforcement agents commit the act serving as a predicate for the deployment of nonlethal weapons, nor in any circumstances may rubber bullets, bean bags, or wooden dowels be aimed at areas above the thighs.
6. **Crowd control technology:** Any purchase by law enforcement authorities of equipment for crowd control purposes (including but not limited to tasers, tear gas, pepper spray, and Long Range Audio Devices (LRADs)) shall require prior notice to the public, a meaningful opportunity to comment, and the affirmative approval of the City Council.

## VIII. Transparency and Accountability Provisions

A. **Training.** Local law enforcement agencies shall conduct training activities to ensure that all officers are knowledgeable about the provisions of this ordinance.

B. **Equipment Purchases.** Any purchase by local authorities of electronic technologies to enable monitoring or information collection (including but not limited to electronic body

scanners, drone aircraft, driver's license plate scanners, and closed circuit television cameras) shall require prior notice to the public, a meaningful opportunity to comment, and the affirmative approval of the City Council.

C. **Accountability for Potential Abuses.** Law enforcement officials shall not engage in the unnecessary use of force, nor may they tamper with evidence or hide exculpatory evidence. Allegations that officials either employed unnecessary force, tampered with evidence, withheld potentially exculpatory evidence, or engaged in biased policing practices violating Section III(B), shall be cause for an independent investigation by a civilian review board and, where justified, appropriate departmental disciplinary measures or dismissal.

D. **Public Right to Observe Police Activities.** Law enforcement officials shall respect the rights of members of the public to observe and to capture video and/or sound recordings of police activities during the discharge of their public duties. In exercising these rights, members of the public do not have a right to physically or otherwise interfere with the discharge of officers' duties, nor do members of the public have a right to otherwise violate the law.

## IX. Civil Action and Injunctive Relief

A. Any person subjected to law enforcement activity exceeding the limits imposed by this Ordinance may file in a court of competent jurisdiction a civil action for declaratory or injunctive relief against either

1. the local law enforcement agency employing the individual agent whose conduct constituted a violation,
2. the individual agent(s) responsible for the injury, or both.

B. Litigants shall be allowed access to aggregate data collected under Section III-A.

C. A disparate impact on communities of a particular race, country of origin, religion, or sexual orientation shall constitute a violation of this Ordinance.

## X. Severability

A. The provisions of this Ordinance shall be severable. If any phrase, clause, sentence or provision of this Ordinance is declared by a court of competent jurisdiction to violate the Constitution of the United States or the Constitution of the State of [State], or if its applicability to any agency, person or circumstance is held invalid, the validity of the remainder of the Ordinance and its applicability to any other agency, person or circumstances shall not be affected.

## XI. Distribution

A. Local agencies shall train all officers on the implications of this Ordinance for their respective responsibilities. Agencies shall also conduct written and behavioral assessment to ensure that this measure is understood and followed by officers.

B. The [city executive official] shall send copies of this ordinance to our US Congressional and Senate representatives, the US Senate Committee on the Judiciary, the US Senate Select Committee on Intelligence, the US House of Representatives Committee on the Judiciary, the US House of Representatives Permanent Select Committee on Intelligence, the US Attorney General, and the President of the United States.