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## MEMORANDUM

DATE: June 13, 2017

TO: Mayor Troxell and City Councilmembers

THRU: Darin Atteberry, City Manager  
Jeff Mihelich, Deputy City Manager  
Jacqueline Kozak-Thiel, Chief Sustainability Officer

CC: Carrie Daggett, City Attorney  
Terry Jones, Interim Police Chief

FROM: Beth Sowder, Social Sustainability Director

RE: Community Trust Ordinance Analysis Report

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### Introduction

At the May 16, 2017 City Council meeting, Council directed staff to provide an analysis about the proposed Community Trust Ordinance. A full analysis report is attached. The Executive Summary has been translated into Spanish and is included. The full report will be translated in the next few weeks, and both English and Spanish versions will be available on the Social Sustainability Department website.

### Analysis Report Includes:

- Cross-functional team collaborated on this effort
- Surveyed all City Programs
- Met with some community members to hear concerns
- Full analysis of proposed ordinance conducted
- Reviewed City Strategic Plans and City Values for alignment
- Surveyed all City programs to find out how/what process require immigration status
- Reviewed existing Human Resources, Procurement, and Police policies
- Reviewed Policies and Processes for Employee and Police Policy Violations
- Looked at Legislative Policy Agenda
- Researched Colorado Jurisdictions
- Provided Options and Possible Next Steps for consideration

### Next Steps

Staff is seeking direction from Council regarding which options and next steps should be further explored or implemented.

# Community Trust Ordinance Analysis Report

## Table of Contents

1. Introduction and Executive Summary	Page 1
2. Analysis of proposed ordinance	Page 2
3. Review of Existing Policies	
a. Strategic Plans and City Values	Page 5
b. Survey of City Programs	Page 6
c. Employee and Volunteer Policies	Page 7
d. Procurement and Contractor Policies	Page 8
e. Police Handbook and Policies	Page 8
f. Process for Reporting Policy Violations	Page 12
g. Legislative Policy Agenda	Page 13
4. Research of Other Cities	Page 13
5. Preliminary Community Input Meetings	Page 14
6. Next Steps	Page 17
7. Attachments	Page 19

## Introduction and Executive Summary

At the City Council meeting on May 16, 2017, Council directed staff to provide an analysis of a proposed Community Trust Ordinance (CTO). Research and analysis were conducted by a cross-functional team representing Social Sustainability, Police Services, City Manager's Office, Human Resources, Communication and Public Involvement, and the City Attorney's Office.

Methodologies included surveying 20 internal departments to ascertain what public benefit programs the City offers that collect lawful status verification; reviewing procurement, contractor, human resource policies and the Fort Collins Police Services (FCPS) employee manual and policies; analyzing differences between the CTO and sanctuary city status; researching other Colorado jurisdictions' immigration policies; and analyzing how the proposed ordinance aligns with our organizational values and strategic objectives.

In addition, staff met with several community stakeholders, including Colorado State University, Poudre School District, Fuerza Latina, the Islamic Center and more in order to gain deeper insights into issues facing undocumented, immigrant, and mixed-status family community members.

### What we learned:

- There are between 3,000 and 4,000 undocumented people living in Fort Collins according to the Center for Migration Studies (2016) based on extrapolations from 2015 census data.
- Approximately 3,200 children under 18 live in mixed-status homes.
- Fostering a more inclusive and welcoming city for undocumented and immigrant community members aligns with our organizational values and strategic objectives.
- Immigration issues that are in the national news, such as communication with ICE, immigration detainers and ICE agents detaining people who show up to court, do not currently appear in the City but are causing concern and anxiety amongst immigrant populations in the City.
- City programs that offer a public benefit are required to request lawful status because of state or federal regulations, unless exemptions exist.

- Many undocumented people are not currently living fully participatory lives in the community out of fear of being detained and/or deported (**see Attachment 1**).
- Some are not reporting crimes to Police Services when victims or witnesses of crimes, including crimes against their own children.
- Undocumented people report accessing fewer human services, as well as programs offered by the City (e.g. Recreation), for either themselves or their (often times documented) children.
- In meetings with stakeholders, they report experiences of disparity in how crimes against immigrants are responded to by Police Services (e.g. timeliness, designation of bias-motivation).
- Several current Police Services policies align with the proposed CTO, including that officers must have reasonable suspicion an individual is undocumented prior to checking immigration status.
- Some Colorado jurisdictions have established trust with undocumented and immigrant populations via resolutions that demonstrate solidarity and inclusion (**see Attachment 2**).
- Chapter 13 of the Municipal Code does not include citizenship status as a protected class.

While it is a criminal violation to enter the country illegally, it is not a criminal violation (rather a civil infraction) to remain in the United States without complying with immigration laws. It is a civil violation, the consequence of which is deportation. Most often an undocumented community member will fall into the civil violation category, not the criminal one. This is a distinction worth noting as the City works towards fostering an inclusive, welcoming community where all community members feel valued, safe and affirmed.

Although recommendations are outside the scope of this analysis, potential next steps are outlined at the end of the report, including opportunities to strengthen service provision to the immigrant community. The report also recognizes a need to engage more with immigrant community members in order to better understand concerns, gaps and identified needs to help mitigate existing fears and build more trust between the City and undocumented and immigrant community members.

## Analysis of Proposed Ordinance

Fuerza Latina and others requested that the City consider looking into adoption of a Community Trust Ordinance (CTO) in an effort to strengthen trust between City service providers and the immigrant community by eliminating unnecessary inquiries into immigration status. They provided proposed language for a CTO as well as key points related to it (**See Attachment 3**).

Staff reviewed the proposed ordinance language and provides the following analysis:

### 1. What does the proposed CTO mandate?

The CTO prohibits the City and its employees from taking the following actions, unless an exemption applies:

- Inquire into, or ascertain, an individual's immigration status, citizenship, or country of origin
- Stop, question or detain an individual solely because of perceived national origin, foreign appearance, inability to speak English, suspected immigration status, race or religion.
- Use city resources or personnel to detect or apprehend persons whose only violation of law is or may be related to immigration status.
- Disclose information regarding citizenship or immigration status, unless authorized by the individual or law.
- Perform the work of immigration officials.

The CTO also requires federal Immigration and Customs Enforcement (ICE) agents to identify themselves at all times while in City facilities.

Some of the exemptions that allow the City or its employees to inquire about, or take action based on, immigration status are as follows:

- When required by city, state or federal law or program guidelines as condition of eligibility.
- For purpose of completing I-9 forms and other employment documents.
- If reasonably related to employee's duties.
- When relevant to threatened or actual civil litigation or administrative proceedings.
- When relevant to investigation or prosecution of a violation of a criminal statute.
- To comply with 8 U.S.C. §1373(a), which allows voluntary communication with ICE.
- Police may keep the peace while ICE performs their duties when there is an articulable safety concern, or when required to safely execute a criminal warrant.

In addition to the above, the CTO prohibits withholding City services to an individual based on the following protected classes:

- Ancestry
- Race
- Ethnicity
- National origin
- Color
- Age
- Sex
- Sexual orientation
- Gender variance
- Marital status
- Physical or mental disability
- Religion

The CTO also mandates the City will perform the following services and outreach connected with the CTO:

- Ensure meaningful access to City services for persons with limited English proficiency
- Provide an individual with the reason why the City is requesting immigration status.
- Implement ongoing training and education program to inform city employees and community members of requirements of the CTO.
- Post information about the CTO, and how to report violations, in all City facilities.

The CTO also requires the City to charge an existing department, as well as the Human Relations Commission, with receiving reported violations of the CTO. Violations of the CTO would presumably be punished under the City's general penalty provisions set forth in City Code §1-15, which includes fines not to exceed \$2,650 and up to six months imprisonment for criminal violations and a fine not to exceed \$2,650 for civil violations.

## **2. What is a sanctuary city and what are the consequences of being one?**

To the extent the term is used in connection with federal regulations or programs, the federal government determines what a sanctuary city is. Currently, the federal government defines a sanctuary jurisdiction to include a city that willfully violates 8 U.S.C. §1373, which section prohibits a municipality from restricting its communications between its law enforcement function and federal Immigration and Customs Enforcement (ICE). Proposed H.R. 400 of the 115<sup>th</sup> Congress 1<sup>st</sup> session (2017-2018), if passed, would also define a sanctuary jurisdiction to include any municipality that does not comply with a request from the Department of Homeland Security (DHS) to detain an illegal alien until DHS is able to take custody of the individual.

The federal government currently takes the position that a sanctuary jurisdiction may lose any grants from the Department of Justice (DOJ). Proposed H.R. 400, if passed, would also take away additional federal funding from a sanctuary jurisdiction. There have been some recent proposals to regulate sanctuary cities at the state level in Colorado, however, while no laws have been enacted, the definition of the term and consequences would be set by the law adopted.

### **3. Does state law require the City to verify lawful presence?**

Colorado Revised Statutes §24-76.5-103 requires a municipality to verify the lawful presence of any individual that is 18 years of age or older that applies for state, local and federal public benefits and sets forth the identification that a municipality may accept to verify such presence.

Colorado Revised Statutes §8-17.5-102 states that the City shall not enter a public contract for services with a contractor who knowingly employs or contracts with an illegal alien to perform work under the contract or who knowingly contracts with a subcontractor who knowingly employs or contracts with an illegal alien to perform work under the contract.

Though the above laws may fall into exemptions of the CTO, additional edits would be necessary to make it clear that the City may request immigration information to comply with state law.

The City previously passed Resolution 2006-085 to comply with C.R.S. §29-29-103, which required Colorado municipalities to report arrestees to ICE when there is probable cause that the arrestee is not legally present in the United States. Even though C.R.S. §29-29-103 was repealed in 2013, Resolution 2006-085 has not been repealed.

### **4. What internal anti-discrimination measures has the City taken?**

The City has enacted internal anti-discrimination plans and policies that include:

- The City's Title VI Plan reiterates its commitment to preventing discrimination in the administration of its programs, services and activities to those persons served on the bases of race, color and national origin (the "Plan"). The Plan sets forth a thorough explanation, by each department, of actions the City will take to ensure compliance with Title VI. The Plan also reiterates the City's commitment to comply with the Americans with Disabilities Act and prevent discrimination on the basis of disability in the administration of its services, programs and activities.
- The City has adopted a language access plan ("LAP") to establish policies and procedures designed to ensure meaningful language access to persons with limited English proficiency while using or coming into contact with City services, programs and activities.
- The City's personnel policy 1.2 prohibits unlawful discrimination in employment based on gender, gender identity, gender expression, race color, religion, creed, national origin, ancestry, age 40 years or older, marital status, disability, sexual orientation, genetic information, pregnancy, or

other characteristics protected by law. The City's personnel policy 8.2 prohibits harassment based on race, color, religion, sex, national origin, age, disability, sexual orientation, genetic information, or any other characteristic protected by law, and further prohibits sexual harassment or harassment that creates an intimidating, hostile or offensive work environment. The City's Police Services Manual has similar employment provisions at Policy 328.

- The City's Police Services Policy 402 prohibits providing police services differently based on race, ethnicity, nationality, religion, sex, sexual orientation, economic status, age, cultural group, or disability. Racial or ethnic profiling is also prohibited.

In addition to the above, the City has enacted an anti-discrimination ordinance at City Code Chapter 13 that protects individuals from discriminatory treatment based on the following classifications:

- Race
- Color
- Religion
- National origin
- Sex
- Marital status

Chapter 13 protects these individuals from being discriminated against in the following activities:

- Employment
- Housing
- Public accommodations

Based on the above, any approved elements of the CTO could be integrated into existing portions of City Code, plans and policies, rather than as a stand-alone ordinance.

## **Review of Existing Policies**

### **Strategic Plans and City Values**

Staff reviewed current City strategic plans and the City's stated Values, and found alignment in the following areas:

- 1) City Strategic Objective Neighborhood Livability & Social Health (NLSH) 1.3: *Promote a more inclusive and equitable community that embraces and celebrates diversity.*
- 2) Social Sustainability Department Strategic Plan:
  - i) Goal B.1: *To promote and maintain a welcoming, inclusive community where people feel connected.*
  - ii) Action Item 2.b: *Research existing partner and community programs to help inform refugee and immigrant populations of their legal rights and responsibilities; seek opportunities to create programs where none currently exist.*

### **Organizational Values**

Staff reviewed the six City of Fort Collins organizational values and found alignment in each one:

- *Collaboration – We partner internally and externally and believe that by working together we achieve better results.*
  - Working with internal and external partners on how best to serve our immigrant and undocumented population fosters an insightful, holistic approach to a complex issue, ultimately enhancing our organizational capacity to provide exemplary service to the entire community in a culturally sensitive manner.
- *Excellence – We set high standards, explore creative approaches to service delivery and problem solving, and seek ways to innovate and improve.*
  - We seek to identify any potential barriers that exist in our service provision to our immigrant and undocumented population, with full dedication to process improvement, creative solutions and innovative ways of addressing issues that disrupt their ability to lead peaceful and fully participatory lives in Fort Collins.
- *Integrity – We exemplify the highest standards of ethical behavior. We treat others with respect, and are honest, inclusive, and transparent.*
  - We understand that leading by example in serving our marginalized residents with respect, honesty and inclusion helps strengthen a sense of belonging for all in Fort Collins while underscoring our commitment to the highest ethical standards.
- *Outstanding Service – We seek to understand our customers’ diverse needs and explore ways to exceed their expectations.*
  - We are open when listening to fears within the immigrant community with hopes of enhancing our organizational capacity to serve those in our community who might be experiencing unintentional barriers in accessing City services or are otherwise limiting their participation within the community at large.
- *Safety and Well-Being – We embody a culture of safety and wellness and believe that life balance matters.*
  - Working to gain a better understanding of what barriers exist within our immigrant and undocumented population helps ensure the physical and mental well-being of residents who may feel especially vulnerable, fearful or excluded, thereby helping foster a culture of safety for all.
- *Stewardship – We are dedicated to protect and enhance our organization and community’s social, economic, and environmental resources.*
  - We are committed to protecting the social resources of our community, enhancing prosperity for all, and seeking to better understand any potential impacts to our economy if our immigrant and undocumented population curtails participation across all sectors.

### **Survey of City Programs**

City departments were surveyed to find out what public benefit programs, grants, loans, or licenses are offered that request information from participants/clients pertaining to citizenship or immigration status—in some cases inadvertently via requesting a person’s social security number. A summary of the results are:

Outreach to 20 Department Divisions resulting in:

- 100% response rate
- 10 Divisions inquire about citizenship for 19 different programs
- 100% inquire because of state and/or federal requirements

Divisions include:

1. Building Code Services

2. City Clerk's Office
3. Cultural Services
4. Engineering
5. Environmental Services – Air Quality
6. Environmental Services – Recycling
7. FC Moves
8. Forestry
9. Historic Preservation
10. Human Resources
11. Library District
12. Natural Areas
13. Neighborhood Services
14. Parks & Cemeteries
15. Police – Investigations
16. Purchasing
17. Recreation
18. Sales Tax
19. Social Sustainability
20. Utilities

Staff followed up with Divisions to gain a more thorough understanding of why programs inquire about citizenship, the application process, and if applicants receive benefits since these are important factors that determine whether or not state and/or federal requirements need to be applied.

- 18 programs currently require applications
- 12 offer benefits (i.e. discounts, rebates, wages if hired)

### **Employee and Volunteer Policies**

The Human Resources Department oversees all hiring and recruitment of City employees and volunteers. The Equal Opportunity Statement clearly prohibits discrimination for employment decisions and prohibits discrimination and harassment in the work environment. Additionally, there are policies that prohibit discrimination and harassment in the Conduct and Performance and Harassment Prohibited sections.

Below outlines each program and how/what information is required and/or requested regarding citizenship and/or immigration status.

#### **a) Talent Acquisition**

- i) Application asks, "Are you a citizen of the United States or are you legally authorized to work in the U.S.?"
- ii) I-9 Verification requires document(s) from the acceptable list stated on the I-9
- iii) On-boarding – FOB card - the employee is required to show Identification (does not have to be government issued)
- iv) Background Checks - not required
- v) Drug Screenings 8.17.5 (Concentra requires ID)

#### **b) Volunteer Program**

- i) Volunteer Application - ID optional to process an application
- ii) Position of Trust Volunteers Only - Requires ID necessary to process an application
- iii) Volunteers that drive to conduct City business - Driver's License Number Required



- c) Unpaid interns
  - i. Same as volunteers

## **Procurement and Contractor Policies**

### **Purchasing Services Agreement and Professional Services Agreement**

The City's Services Agreement and Professional Services Agreement include a contract provision which is a "prohibition against employing illegal aliens." This provision is a requirement of the Colorado Revised Statute (C.R.S) Section 8-17.5-101 et. seq. (**see Attachment 4**) which prohibits the City from entering into a "public contract for services" with a contractor who knowingly employs or subcontracts with illegal aliens and the state requires the City to include certain illegal alien provisions in all of its "contracts for services."

The provision requires the City's contractor to notify the City within three (3) days that contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien. The provision also requires the City's contractor to terminate the subcontract within three (3) days in the event the subcontractor does not cease employing or contracting with the illegal alien or provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

The statutes do not provide any kind of enforcement action that can be taken against the City or impose any penalty on the City for failing comply with the statute.

The City does not perform any action to enforce and/or verify the contractor's compliance to the statute.

### **New Vendor Set-Up**

The City requires all new vendors/contractors to complete a Department of the Treasury Internal Revenue Service Form W-9, Request for Taxpayer Identification Number and Certification. The W-9 requires a social security number or employer identification number. The W-9 also includes a requirement to certify that "I am a U.S. citizen or other U.S. person (defined below)." The W-9 is required for federal income tax reporting.

## **Police Handbook and Policies**

Fort Collins Police Services utilizes ten policies to address various aspects of this matter. They are briefly described below (**See Attachment 5**) as well as where these policies align with the proposed Community Trust Ordinance (CTO).

- **#338 Bias-Motivated Crimes**
  - Recognizes the Federal and State prohibitions on bias-motivated crimes
  - Commits to establishing proactive relationships and to swiftly investigating these crimes – aligns with CTO (Whereas 1, 2, 3, 4, & 5) and (j & k)
  - Specifically prohibits turning a victim/witness over to federal authorities solely for immigration violations – aligns with CTO (Whereas 4 & 5) and (d & e)
- **#340 Expectations of Conduct**
  - Prohibits harassment or intimidation of any person including that based on protected status – while immigration status is not specifically called out as a protected class, this applies to any person - aligns with CTO (Whereas 1 & 2) and (c & j)
  - Prohibits any form of bias-based policing – aligns with CTO- (Whereas 1 & 2) and (c & j)

- Prohibits conduct that tends to impair the effectiveness, efficiency or morale of the Agency, may cause the public to lose confidence in the police department, violates the public trust or negatively affects the reputation of the Agency or any employee – aligns with CTO (Whereas 4)
  - Prohibits violating the Constitutional rights of any person
  - Requires employees to have articulable, factual reasons for engaging in an investigation – aligns with CTO (c, h.5, & l)
  - Prohibits employees from belittling or dismissing reports from a person or requests for information or assistance – aligns with CTO (j)
  - Requires employees to be courteous, civil, and respectful of people – aligns with CTO (Whereas 1) and (j)
- **#352 Mutual Aid and Outside Agency Assistance**
  - Requires employees to assist outside agencies whenever reasonably possible as is consistent with law and policy – this applies when FCPS is called to assist for criminal matters since FCPS has an obligation to help stabilize other law enforcement agencies' activities and support them (but it does not include actual immigration enforcement) - aligns with CTO (d and h.7)
- **#368 Limited English Proficiency Services** – entire policy aligns with CTO (k)
  - Requires that LEP individuals have meaningful access to law enforcement services
  - Forbids discrimination or denial of service based upon protected status [See CTO (j)]
  - Provides for telephonic interpreters
  - Maintains list of qualified bilingual employees and authorized interpreters
  - Ensures signage stating interpreters are free of charge for LEP persons
  - Reviews/Updates vital documents for translation into languages most likely to be encountered
  - Sets expectation that employees use various resources to determine LEP language needs and then provide service through free interpreter or through the person's interpreter
  - Sets expectations for qualified bilingual employees and interpreters
  - Sets 911 call-taking responsibilities for LEP persons
  - Sets expectations for officer training, enforcement, interviews, jail booking, receipt of complaints, and community outreach with LEP persons
- **#402 Racial or Bias-Based Profiling**
  - Forbids bias in race, ethnicity, nationality, religion, sex, sexual orientation, economic status, age, cultural group, disability, or affiliation with an identifiable group towards differing levels of service or enforcement – immigration status is not listed in local, state, or federal law as a protected status – as worded, this policy effectively protects the concerned persons because it lists many classes and mirrors #340 which forbids harassment behaviors for “any” person - aligns with CTO (Whereas 1 & 2) and (j)
  - Forbids racial or bias-based profiling while allowing officers to consider legitimate reports of suspect description in taking action – aligns with CTO (Whereas 2) and (e)
  - Requires employees to report any known instances of racial or bias-based profiling – aligns with CTO Section 2 (b)
  - Requires officers to provide identification through citation, arrest documents, or business card to any person detained on a traffic stop

- Requires officers to be prepared to articulate reasonable suspicion to justify a detention that is independent of the person's protected class – aligns with CTO (l)
- Requires Agency to provide information at its front desk on how to make a complaint **(See Attachment 6)** - aligns with CTO Section 2 (b)
- Requires Agency to investigate all complaints of alleged racial or bias-based profiling – aligns with CTO Section 2 (b)
- Sets expectation for supervisors to monitor employees for any behavior that may conflict with this policy – aligns with CTO Section 2 (b)
- Requires Agency to compile, at least annually, information derived from profiling complaints received due to the distribution of officers' business cards. Info shall be made available to the public. – Information provided at FCPS front counter and can be added to the website.
- Sets employee training expectations – aligns with CTO Section 2 (a)
- **#422 Diplomatic and Consular Contacts**
  - Requires employees to treat foreign service personnel with respect and courtesy
  - Forbids in-custody arrest of person with diplomatic or consular immunity
  - Identifies levels of immunity afforded to foreign service personnel
  - Discusses appropriate identification cards for Foreign Service personnel – aligns with CTO (i)
  - Restricts the search, storage, and impoundment of vehicles from immune persons
  - Sets limits on the arrest of foreign nationals who do not claim diplomatic or consular immunity – aligns with CTO (b, c, & d)
- **#428 Immigration Violations**
  - Discusses ICE's primary authority under Title 8, United States Code (Federal law). – aligns with CTO (Whereas 5)
  - Allows FCPS to assist ICE when criminal violations are discovered outside Title 8 – aligns with CTO (d & h)
  - Refers citizens reporting immigration violations to ICE – aligns with CTO (Whereas 6)
  - States officers must make legitimate contact with and have reasonable suspicion that an individual is an undocumented alien prior to checking immigration status. States that contacting an individual for suspicion of being an undocumented alien should generally not be the sole basis for detention or arrest. – aligns with CTO (e & d)
  - Allows officers to take reasonable steps to identify a person suspected of a criminal violation – aligns with CTO (b & i)
  - Allows arrest of person suspected of criminal violation who cannot be reasonably identified – aligns with CTO (i)
  - States arrests will be based upon factors establishing probable cause and says race, ethnicity, age, gender, sexual orientation, religion, and socioeconomic status will be of no bearing – aligns with CTO (c)
  - Acknowledges people's need to feel secure that contacting law enforcement will not make them vulnerable to deportation – aligns with CTO (Whereas 4)
  - States that employees should not attempt to determine the immigration status of crime victims and witnesses and should not take enforcement action absent exigent circumstances or reasonable cause they are involved in criminal law violations – aligns with CTO (b & c)
  - Sets standards for review of U-Visa/T-Visa by a Criminal Investigations Division supervisor

- **#440 Detentions, Contacts, and Photographing Detainees**
  - States officers may stop individuals for the purpose of conducting a Field Interview where reasonable suspicion of criminal behavior is present – aligns with CTO (h.3 & i)
  - States that a subject may be detained to conduct a Field Interview/Identification for the period of time reasonably necessary to determine their identity and to resolve the officer's suspicions – aligns with CTO (h.3 & i)
- **#600 Investigation and Prosecution**
  - Requires employees assigned to a case to proceed with due diligence in evaluating and preparing the case for appropriate clearance or prosecution – aligns with CTO (j)
  - Interview the victims, informants, complainants, witnesses, and suspects – aligns with CTO (h.3 & 4)
  - Communicate with the victims to provide case status – aligns with CTO (j)
  - Provide referrals for services such as Victim Services and Department of Human Services – aligns with CTO (j)
  - Requires a free interpreter be made available for a person with communication disability before any interrogation or taking of their statement – aligns with CTO (k)
  - Requires a thorough investigation where possible – aligns with CTO (j)
- **#1020 Administrative Investigations** [Entire Policy aligns with CTO, See CTO (j) and Section 2 (b)]
  - Sets complaint and investigation processes for allegations that FCPS employees violated law or policy
  - Ensures fair treatment of complainants and witnesses of all classes against employees
  - Provides complaint packets (English/Spanish)
  - Allows for verbal and confidential complaints
  - Allows complainant to have representative with them
  - Allows for complaint review by Citizen Review Board
  - Complainant will be notified of findings

The Fort Collins Police Services (FCPS) policies already in place align significantly with the general goals as well as the specific language of the proposed ordinance. FCPS has policies to guide its employees that address how we assist our citizens, work with federal authorities, and handle related matters. Many of the sections of the proposed ordinance are overly restrictive or need some amendments:

- Ordinance Section (b): Overly restrictive. The draft ordinance states *“No city employee shall inquire into the immigration status, citizenship, or country of origin of any person, or engage in activities designed to ascertain the immigration status of any person, while the city employee is acting within the scope of his or her employment with the city. As used in this subsection, “any person” shall include, but not be limited to, victims and witnesses of crime.* The ordinance then goes on to list exemptions for such a strict prohibition. Rather, it might be best to say, *“except as provided in (1), (2), (3), etc. .... below, No city employee shall...”*
- Ordinance Section (d): Overly restrictive. FCPS personnel may assist ICE during immigration enforcement by providing support such as perimeter security.

Circumstances could evolve to a point where physical assistance is provided when a subject resists or assaults (criminal charges) an ICE agent.

- Ordinance Section (e): Again, this is overly restrictive and does not consider myriad of matters that may arise for our officers when such specific disclosure is not required by law, but furthers other enforcement of valid laws or contributes to the public good/safety.
- Ordinance Section (h.5): This section should include all offenses such as Petty and Traffic Offenses.
- Ordinance Section (j): Many international IDs are unique, do not have translations, or are vague by US standards. Officers frequently have to conduct further inquiry of the person or official sources to determine if the ID is valid for the purpose it's being presented.
- Ordinance Section 2(b): FCPS personnel are investigated by its Internal Affairs Unit under FCPS policy which has a very high level of accountability.

Fort Collins Police Services is open to making needed changes if there are areas identified in their policies that are not clear or still cause concern.

### **Process for Reporting Employee Policy Violations**

For City employees, there is an anonymous hotline employees can call as well as policies pertaining specifically to reporting violations about discrimination and/or harassment. *"Any employee who believes that he/she has been unlawfully discriminated against or harassed should promptly report the facts and the names of the individuals to the Chief Human Resources Officer or by other means provided by the City for reporting unlawful or impermissible conduct. The City will promptly investigate all such complaints and take appropriate action."* **(See Attachment 7).**

For a complaint about a City employee from a community member, contact Human Resources at 970-221-6535.

Specifically for Police Services, there is a detailed complaint and review process. The description of the process and the form is available at the front desk of Police Services or people can call 970-419-FCPD(3273) to request it. The Fort Collins Police Services complaint intake and process (which applies to both union and non-union employees) is as follows:

- (1) Complaints can be made in person, by phone, by email, or US mail
- (2) Complaint packets are in English and Spanish (other languages may be supported through free services)
- (3) Three levels of administrative investigation based on accusation:
  - (a) Performance Complaints are investigated by the employee's supervisor
  - (b) Level I Complaints are investigated by the employee's supervisor or Internal Affairs
  - (c) Level II Complaints are investigated by Internal Affairs
- (4) Some administrative investigations may be reviewed by special boards
  - (a) Citizen Review Board
  - (b) Special Force Review
- (5) Investigations are reviewed by a chain of review (senior personnel) which render findings on the alleged policy violations and recommend discipline and/or training if appropriate
- (6) The Chief of Police is the final decision-maker
- (7) Corrective Actions may include:
  - (a) Counseling/Mentoring

- (b) Training
- (c) Reassignment
- (d) Oral Reprimand
- (e) Written Reprimand
- (f) Suspension
- (g) Demotion
- (h) Termination

### **Legislative Policy Agenda**

The City's Legislative Priorities are broad issues Fort Collins is focused on during the Colorado General Assembly and United States Congress sessions. The Priorities may carry over year to year since they are larger, more challenging issues that may take multi-year work to influence.

The Policy Agenda is a broad set of policy statements meant to convey positions on issues that affect the quality of life and the governance of our community. It is structured to address areas of local concern and to also reflect the strategic planning that guides City of Fort Collins organizational resource allocation and decision making.

The 2017 Legislative Policy Agenda does not directly address immigration or citizenship status.

Potential alignment with the CTO includes the following language found in the Legislative Policy Agenda:

- The Social Sustainability Department's mission is to support a diverse, equitable, and inclusive community that successfully meets the basic needs of all residents. This mission is supported through programs, policies, and partnerships that provide access and opportunities for all.
- Under Parks and Recreation- Expand access and inclusion for all citizens to community recreational opportunities.
- Under Public Safety- Provide greater protection to victims of crime.

Legislative Policy Agenda does not set City procedures or laws. It is a guiding document directed towards State and Federal level legislation.

### **Research of Other Cities**

In researching other Colorado jurisdictions, staff found a handful of cities that either are a Sanctuary City or have taken some action to indicate immigrant support. Additionally, the State adopted a bill in 2013, House bill 13-1258, making it no longer illegal to prohibit a peace officer, local official, or municipal employee from communicating or cooperating with federal officials with regard to the immigration status of any person within this state. It was cited as being done because of "importance of building trust in communities and conserving local government resources for other matters."

#### **Colorado Jurisdictions: Comparison of Immigrant Support**

Boulder	Self-identified Sanctuary City January 2017
Snowmass	Self-identified Sanctuary City Spring 2017
Lafayette	Resolution ensuring equal protection and services for all, highlights strong support for immigrants

Denver	Media sources describe Denver as taking an aligned and supportive stance on maintaining a welcoming, inclusive environment for immigrants
Westminster	Stated on website: the city embraces its diverse community and that local law enforcement officers do not inquire about immigration status
Aurora	Citizenship and immigration resource page on website

While City staff focused on research of Colorado jurisdictions, Fuerza Latina provided some research they found of other cities across the country with similar community trust ordinance. **(See Attachment 8)**

### **National Immigration Issues that May Affect the City**

During the research of other jurisdictions, both in Colorado and the nation, staff found additional issues that continually appeared in the national discourse. Although these topics have not caused recent issues within the City, the coverage of these topics on national news and other media sources have led to increased concern and anxiety amongst immigration populations within the City.

The first issue staff has identified is to what extent cities require their police officers to report suspected illegal immigrants to ICE. While cities cannot restrict communications between law enforcement and ICE, cities do not have to require police officers to report suspected undocumented immigrants to ICE. The City's police policies do not restrict its officers from communicating with ICE, but also do not require officers to report suspected undocumented immigrants to ICE. However, the City has previously adopted Resolution 2006-085 that requires its officers to report arrestees to ICE when there is probable cause that such arrestees are in the Country illegally. Resolution 2006-085 was passed to comply with C.R.S. §29-29-103, which statute was repealed in 2013. Because Resolution 2006-085 was not repealed by the City, the resolution still requires police officers to report arrestees to ICE when they fit the requirements of Resolution 2006-085, even though it does not appear to be a current City police practice.

Another issue that cities across the nation have been addressing is immigration detainers. An immigration detainer is a notice that ICE issues to a law enforcement agency requesting that the agency detain an individual when ICE has determined probable cause exists that the individual is an illegal alien. The City does not operate a jail and so the extent of the City receiving an ICE immigration detainer for somebody in City custody is minimized, however there is still a chance this may become an issue.

A new issue that is starting to emerge amongst cities, including Denver, is that ICE agents will review the public docket of a municipal or county court for individuals who may be in the country illegally. The ICE agents then wait outside the municipal court to detain, and possibly deport, the individual. While the City has not had any reported instances where an ICE agent waited outside of municipal court to detain an individual, there is the possibility that individuals may fear deportation by ICE agents if they go to municipal court and ultimately elect not to show up for scheduled court dates.

### **Preliminary Community Input Meetings**

City staff conducted targeted engagement with community stakeholders who consistently work or have familiarity with undocumented and/or immigrant community members. Although there are plans for broader engagement to collect more diverse perspectives, staff was intentional in collecting the following data for the purposes of this analysis, as there can be an inherent tension and vulnerability with undocumented individuals interfacing with municipal organizations, and because of this, no data points

had been collected to date—although that particular outreach is highlighted in the Social Sustainability Strategic plan (Action Item 2.b under Goal B.1: *Research existing partner and community programs to help inform refugee and immigrant populations of their legal rights and responsibilities; seek opportunities to create programs where none currently exist.*)

Themes emerged in speaking with different stakeholders around the need for community workshops and/or trainings, bias reduction trainings for internal staff, fear of reporting crimes when victim or witness, isolating in homes and fear of applying for city and human services.

Following is a summary of stakeholder interviews:

- **Islamic Center of Fort Collins Leadership**

President Tawfik Aboellail & Islamic Center Board Member Belgasem Belgasem visited City staff on June 16, 2017 to discuss the CTO and to gather further input regarding immigrant relations with the City of Fort Collins and the community as a whole.

President Aboellail and Islamic Center Board Member Belgasem shared a desire for City staff to enhance civil rights education and awareness for immigrant community members. He also expressed a desire for more equity and inclusion considerations in all projects, programs and policies initiated by the City. President Tawfik expressed that his center's members find great value when city officials and employees ask to utilize the Islamic Center of Fort Collins facilities to conduct such informative and educational events, as it fosters trust and comfortability among participants.

Additionally, there is a desire to increase volunteer engagement awareness and opportunities among this community. While these two gentlemen did note that Fort Collins demonstrates a better sense of inclusivity compared to other cities they have been exposed to in the state and nation, they suggested the City maintain a holistic, proactive approach in its inclusivity efforts. There are a few suggestions they had to increase the welcoming nature of the City of Fort Collins:

- Increased training to reduce bias/profiling from Police Services regardless of the situation at hand (civil infraction versus suspected criminal cases)
- Increased dietary restriction considerations in city/community sponsored events
- Expanded holiday recognition considerations
- More frequent and intentional workshops/educational seminars regarding civil rights (housing rights, eviction processes, etc.), law enforcement services, consulate/immigration resource information (political asylum, refugee status, and language interpretation services)

- **Fuerza Latina Leadership & Community Members**

Fuerza Latina leaders Kim Baker Medina, Cheryl Distaso, and Nathan Howard met with City Staff and community members on June 19, 2017 at the Fort Collins Old Town Library to share experiences, concerns, and desires moving forward with increased understanding and equitable treatment for undocumented community members. Also present were individuals who shared how they live in persistent fear in their daily lives, or as a 'shadow' class, and fear, in particular, interfacing with police services.

The group believes a Community Trust Ordinance which includes punitive measures for City Staff who intentionally discriminate individuals based on citizenship status would send a strong message from City Leadership that this behavior is prohibited.



Community members indicated they understand not all officers have ill intentions, in fact they stated that they believe most in Fort Collins are well-intentioned, but they remain fearful of interactions, thinking it could lead to their being uncovered and potentially detained and/or deported. Community members stated they do not seek amnesty for violent/dangerous criminals who are undocumented but rather an enhanced assurance they are welcome as peaceful community members in the City of Fort Collins regardless of their citizenship status. A few humanitarian concerns raised by Fuerza Latina community members included:

- Failure to report crimes among the undocumented community (i.e. domestic violence, assaults, robbery, etc.) due to the fear of releasing their legal status to Fort Collins Police Services
- Having no access to advanced health services in Fort Collins and needing to commute outside of town for care (a mother shared she feared for her family's sustainability when she risks commuting to Denver with an invalid license to receive care for her toddler-aged daughter who suffers from cancer)
- Individuals who lack legal status who work at cleaning facilities at night fear reporting suspicious criminal activity to local law enforcement out of fear of being arrested themselves
- Parents refrain from applying for city resources (i.e. Recreation Programs) that request lawful status information even though their children are U.S. Citizens, and suggest the City maintain a clear statement/ "guarantee" that any City Staff will not disclose their information to higher legal jurisdictions when unnecessary

- **CSU's Diversity & Inclusion Leadership**

Oscar Felix, Associate Vice President for the Division of Diversity and Inclusion, met with City Staff on July 6, 2017 at the City of Fort Collins Utilities Building to discuss the CTO and to gather further input regarding Colorado State University's practices with immigrant populations. Associate Vice President Felix highlighted CSU's efforts to address all non-domestic/international/varied status students. Among those he highlighted:

- The existence of a DACA & Undocumented Student Taskforce on campus that meets to address the specific needs of this student population, which currently sits at 120 students. This taskforce aims to assist students from the recruitment/admissions process, to financial aid services, and beyond while being cautious of navigating federal and state implications of doing so.
- The Division of Diversity and Inclusion seeks to enhance its inclusivity efforts to all immigrant students including international populations through impactful programming, and outreach (i.e. "You are Welcome Here" Poster campaign/ Dr. Frank's Community Forum). Associate Vice President Felix noted that due to the heightened level of fear that is present on campus and in the community due to President Trump's Executive Order(s) regarding the Travel Ban of some Middle Eastern countries, along with the increased attention to anti-immigrant rhetoric, there is more of a need to mitigate these fears on campus.
- Through a student fee-funded area, students will also have increased access to immigration attorneys beginning in the 2017-2018 academic year.
- Through the Access Center at CSU, efforts exist to support at-risk students including underrepresented communities that include but are not limited to undocumented and

- immigrant students.
  - Associate Vice President Felix echoed the need to examine the inconsistencies that the City of Fort Collins might have when it comes to full participation of community members with varied citizenship/legal status through engagement with inclusivity and city services.
  - Felix also suggested more collaboration with City staff on speakers, workshops, cross-promoting celebratory/cultural events, etc., to better leverage resources and broaden communitywide efforts on inclusion.
- **CSU Dreamer's Student Organization**  
 Student Leaders spoke with City Staff via phone on July 11, 2017 to discuss immigrant and undocumented student experiences as follows:
  - Concerns about reporting to police, especially when there are students with limited legal status as it pertains to the safety of a party environment, profiling by association even if not participating in the behavior
  - Fear when reaching out for community reproductive health resources because they do not know what information will be requested of them
  - Housing disparity: Landlords requiring proof of status to lease and requesting an additional co-signer if under certain age (21), yet parents are undocumented so they cannot find housing as easily as their U.S. Citizen lawful student counterparts
- **Holy Family Church Leadership**  
 Administrative Secretary Maria Fuente spoke with City Staff via phone on July 10, 2017 to discuss immigrant experiences as follows:
  - 33+years in her position working with immigrant communities
  - "People feel intimidated when calling FC Police Services...racial profiling is prominent, vehicle accident service discrimination (police service bias when interacting with folks who don't speak English), fear to report derogatory threats/harassment, domestic violence reporting."
  - Requests for enhanced Spanish translation for victims
  - Believes a hotline and increased civil rights education and engagement would be beneficial
  - Supports mission of Fuerza Latina's efforts
- **Poudre School District's Equity Department**
  - Shared that parents often won't report landlord violation for fear of exposure
  - Hesitancy to interact with school programs and staff
  - People are living with fear of being uncovered and as a result, isolate and don't lead fully participatory lives in community.

## **Next Steps**

### Options and Possible Next Steps

1. Consider repealing City Resolution 2006-085 passed in 2006 to comply with Colorado Revised Statutes (C.R.S.) 29-29-103, which required Colorado municipalities to report arrestees to ICE when there is probable cause that the arrestee is not legally present in the United States. Even

though C.R.S. 29-29-103 was repealed in 2013, City Resolution 2006-085 still remains in effect.

2. Convene an internal cross-departmental team to examine Human Resources and/or Police Policies to find potential changes to bring to Council or City Manager for consideration.
3. Consider legislative policy agenda stance on State and Federal laws that require the City to take special measures related to immigration status, including examining other state trust acts.
4. Explore adopting a resolution that demonstrates clear support for immigrant populations.
5. If Council directs staff to consider formal adoption of a Community Trust Ordinance, a community engagement process would need to occur since this report focused primarily on internal analysis so broader community engagement would be needed.
6. Consider a language shift and replace “resident” or “community member” for “citizen” in all City documents, both internal and external.
7. Public Communications and Engagement Strategies
  - a. Determine Public Communication and Engagement Process to inform community members, particularly immigrant and undocumented population, about City policies and practices to enhance the feeling of safety and instill confidence in the City’s policies and processes.
  - b. Determine Public Communication and Engagement Process to hear from the immigrant and undocumented community members on issues affecting their participation in City services and how they would like to be informed, going forward, of any changes to our processes.
  - c. City staff has heard that more education and outreach would be helpful in making Fort Collins a more welcoming place. In response, the Downtown Development Authority is putting up multi-lingual welcome banners, and the City is looking into adding some on City light poles.
8. Consider the implementation of a “hot-line” as a safe place for people to call to report concerns.
9. Convene an internal programs committee to see what, if any, changes can be considered for different departmental programs.
10. Explore possibility of amending the Municipal Code to include citizenship status as a protected category in instances that maintain adherence to state and federal law.
11. Explore possibility of City accepting valid non-US issued forms of identification.
12. Outside the realm of this proposal, suggestions from community members on how to increase trust and inclusion of local immigrant and undocumented populations included:
  - a. Explore collaborating with nonprofit partners in the housing arena to ensure people know their rights regarding landlord/tenant relations, especially in cases of evictions.
  - b. Explore possibility of replicating Vida Sana program for other minority groups in the community in order to better serve underrepresented populations and foster positive interactions with City services.

## **Attachments**

1. Translated Immigrant Testimonials from Fuerza Latina
2. Community Trust Ordinance Research of Colorado Jurisdictions by city staff
3. Proposed Community Trust Ordinance and Key Points from Fuerza Latina
4. City of Fort Collins Purchasing Services Agreement and Professional Services Agreement
5. Fort Collins Police Services Policy Manual sections
6. Fort Collins Police Services Complaint Process Form
7. City Employee Performance Complaint Process and Flow Chart
8. Fuerza Latina Research on Cities with Similar Ordinances

Due to the lengthy nature of Attachments 5-6,  
they are posted online at  
<http://citydocs.fcgov.com/?dt=MAIL+PACKET&dn=CITY+CLERK&vid=218&cmd=showdt>

## Introducción y Resumen Ejecutivo

En la reunión del Ayuntamiento del 16 de mayo, 2017 se encomendó a funcionarios de la ciudad elaborar un análisis de una Ley de Confianza para la Comunidad (CTO, por sus siglas en inglés) que fue propuesta. La investigación y el análisis fueron realizados por un equipo multidisciplinario con representación de los departamentos de Sustentabilidad Social, Servicios de la Policía, la Oficina del Administrador de la Ciudad, Recursos Humanos, Comunicación y Participación Pública, y la Oficina del Procurador de la Ciudad.

Las metodologías incluyeron la toma de encuestas en 20 departamentos internos para determinar cuáles programas de beneficencia pública que ofrece la Ciudad requieren la verificación del estatus legal; la revisión de las políticas de aprovisionamiento, contratistas, recursos humanos, y el manual y las políticas para los empleados del Departamento de Servicios de Policía o *Fort Collins Police Services* (FCPS, por sus siglas en inglés); el análisis de las diferencias entre el CTO y el estatus de ciudad santuario; la revisión de las políticas de inmigración de otras jurisdicciones de Colorado; y el análisis de cómo la ley propuesta se alinea con los valores y los objetivos estratégicos de nuestra organización.

Asimismo, los funcionarios se entrevistaron con varias partes interesadas de la comunidad, incluyendo Colorado State University, Poudre School District, Fuerza Latina, el Centro Islámico y otros más para obtener una perspectiva más a fondo de lo que enfrentan los miembros de nuestra comunidad que son indocumentados, inmigrantes, y familias de estatus mixto.

### Lo que aprendimos:

- Hay entre 3,000 y 4,000 personas indocumentadas que residen en Fort Collins, según el Centro de Estudios Migratorios (2016) basado en datos extraídos del censo 2015.
- Aproximadamente 3,200 niños menores de 18 años viven en hogares de estatus mixto.
- El fomentar una ciudad más inclusiva y acogedora para los miembros de la comunidad que son indocumentados e inmigrantes se alinea con los valores y los objetivos estratégicos de nuestra organización.
- Los asuntos de inmigración en las noticias nacionales, como la comunicación con ICE, las detenciones de inmigración y los agentes de ICE que detienen a las personas que se presentan en la corte, actualmente no suceden en la Ciudad pero están causando preocupación y ansiedad entre los inmigrantes de la Ciudad.
- Los programas de la Ciudad que ofrecen un beneficio público requieren la verificación del estatus legal debido a reglamentos estatales o federales, a menos que existan exenciones.
- Muchas personas indocumentadas actualmente no gozan de una vida donde pueden participar plenamente en la comunidad por miedo a ser detenidos y/o deportados (**vea el Anexo 1**).
- Algunos no reportan crímenes a la policía siendo víctimas o testigos de crímenes, incluyendo crímenes contra sus propios hijos.
- Los indocumentados mencionaron que usan menos servicios humanos, y programas que ofrece la Ciudad (por ejemplo: Recreación), para sí mismos o para sus hijos (a menudo documentados).
- La comunidad ha reportado experiencias de trato no equitativo relacionado a la respuesta que da la Policía a los crímenes contra inmigrantes (por ejemplo: tiempo de respuesta, clasificación de crimen motivado por discriminación).
- Varias de las políticas actuales del Departamento de Servicios de Policía se alinean con el CTO propuesto, incluyendo el que los oficiales deben tener sospecha razonable de que una persona es indocumentada antes de revisar el estatus de inmigración.
- Algunas jurisdicciones de Colorado han establecido confianza con las personas indocumentadas e inmigrantes mediante resoluciones que demuestran solidaridad e inclusión (**vea el Anexo 2**).
- El Capítulo 13 del Código Municipal no incluye el estatus de ciudadanía como una clase protegida.

Aunque es una violación criminal entrar al país de manera ilegal, no es una violación criminal (sino una infracción civil) permanecer en los Estados Unidos sin cumplir con las leyes de inmigración. Es una violación civil, que tiene como consecuencia la deportación. Comúnmente los miembros indocumentados de la comunidad se encuentran en la categoría de violación civil, no violación criminal. Esta es una distinción que cabe mencionarse ya que la Ciudad trata de fomentar una comunidad inclusiva y acogedora donde todos los miembros de la comunidad se sienten bienvenidos, valorados, seguros y afirmados.

Aunque las recomendaciones están fuera del ámbito de este análisis, los siguientes pasos potenciales se mencionan al final del reporte, incluyendo las oportunidades para fortalecer la provisión de servicios a la comunidad de inmigrantes. El reporte también reconoce la necesidad de vincularse más con los miembros de la comunidad de inmigrantes para tener un mejor entendimiento de sus inquietudes, brechas de servicio y necesidades identificadas para ayudar a mitigar el temor existente y crear mayor confianza entre la Ciudad y los miembros indocumentados e inmigrantes de nuestra comunidad.

# Attachment 1

## **Immigrant Testimonies – May 2017 Re-translated June 2017**

- 1) I wanted to be a volunteer in my son's school but I was afraid I would be asked for my papers, so I decided not to do it.
- 2) We are really afraid to drive or leave the house. We just go out to do what is absolutely necessary and then we quickly return to the house in fear.
- 3) My driver's license is going to expire soon, but it is so hard to get DMV appointments that I have not been able to renew it. I'm so afraid that the police will pull me over since I haven't renewed it and I am a DACA student.
- 4) My daughter is a student at the university, she volunteers in programs for kids after school, and she works at a retail shop. I'm always worried she will be stopped by the police while she is driving because of the color of her skin.
- 5) Before, when I was lost, or I had problems opening a door or doing something, I always felt confident asking the police for help. But now I panic just seeing the police. The fear is so big that I just try to do the things I need to do alone without ever asking for help.
- 6) Everything has changed now that I always am afraid of everything. I am so afraid of my kids not being able to finish their studies; the first one will graduate from CSU in 2018, the second one in 2020 and the third in 2021. I want and I need to be here with them!
- 7) On a number of occasions my house has smelled like tobacco and marijuana. I know who is consuming it, and I have reported it to management. They tell me I should report it to the police, but I stop myself from making the report because I'm afraid that what will happen is something different – that the police will come and just question me because of my status.
- 8) At school my daughter suffered an assault in which she was hit on the head with a rock. We waited some time to see if the school would act, but they never did. We felt really discriminated against and abused, but we never reported it to the police for fear that when they attended to the case that they would ask us about our status.
- 9) En McDonalds one day a group of people next to us yelled ugly slurs at me. I was with my family, and honestly I felt sorry for them because they were so ignorant and xenophobic. I would have wanted to report it, but I have lost my trust in the police.
- 10) I work cleaning offices and banks at night. On occasion the doors have been left open before I arrived, and I have run the risk of entering without knowing if, before me, someone else has entered and robbed the place. But I was too afraid to call the police to check for me.
- 11) Windows in my house were broken. I called the police, but I did so in a state of panic.

12) Any crime not reported and attended to by the police allows the aggressor to go on committing crimes. Secure communities are those that are supported by the police, where the police focus on protecting the whole community and preventing crimes. It shouldn't matter what religious creed, ideology, or migration status the community members have.

13) I am so afraid for my children who are in school. My oldest daughter was stopped by the police and sent to court. I was so afraid she would be detained, even though she is protected by DACA. These days nothing feels secure. I'm also afraid for my spouse. He is in the process of legalizing his status, but I'm afraid that during this process he could be thrown out of the country. He has been such a good citizen; he has a perfect record. But in these times, it's like none of this matters. And, because of this, we all live with fear.

14) I'm so afraid to leave the house to go to work. What if the police stop me and I can't return to my house? What will happen with my children? They are so worried that one day their mom and their dad won't return to them.

15) I work cleaning houses. I have a little company and I pay a lot in taxes. But I'm afraid to participate in any city programs or organizations, even ones like Fuerza Latina, because I'm worried it could make me lose my work. I need my work. I have two children at the university and we have so many expenses to cover.

16) I was driving from my house to the mailbox where I live and a cop parked right next to me. I wasn't speeding and my car's license plates were up to date. He still decided to ask me for my driver's license. I'm in the process of applying for it. (It is very hard to get appointments.) The cop still gave me a ticket and now I'm so afraid that will affect my immigration process.

17) I've been with my husband for 3 years. We've only been married for two months. The moment I found out about the increase in deportations a huge fear came over my every sense. My now husband is undocumented but he has DACA. At first I thought he was safe, but after everything you hear, being true or not ... all you can think about is losing your husband and the father of your child. I want the sense of peace and to live without fear.

18) There were rumors about immigration checkpoints being held. I attend the University. I had to miss a day of school because of fear of having to be stopped at a checkpoint. I am a "dreamer" and have also seen many dreamers questioned and even arrested for being DACA students so I didn't go to school for fear of being detained. I was also afraid to explain my immigration status (DACA) to my professors the next day after missing school.

19) Our apartment lease here in Fort Collins states that there should be no noise disturbance past 10pm. One Saturday night, college students were making a lot of noise. By the time midnight came, they were getting way too rowdy and noisy. Their party lasted until 3am that night. My husband and I were afraid of calling the police for fear of being questioned about our immigration status. About 1am somebody knocked really loud on our door. We were frightened



it could be the police but we quickly realized it was just the drunk students. Even then we were afraid to call the police because of the fear instilled in us.

20) I am afraid of reporting discrimination. Two weeks ago, a person aggressively pursued me and my husband, making obscene gestures and even following us to our house. He began yelling offensive words at us and threatened my husband saying, "If you report this to the police I promise it will go very badly for you." I was very afraid to call the police, but in the end I was more afraid that this person threatening and offending us would do us physical harm. So we decided to talk with the police.

21) I am afraid of driving. The truth is that I only go out to do the absolutely necessary things, but I do it with lots of fear. I never feel secure.

22) I am afraid to report discrimination because I'm afraid that the police will take me away and won't be with my children. And my kids are afraid too. They ask me to be a volunteer at their school like other moms but I am afraid because of my status, that they will take me away, and thinking about not being with my family fills me with so much fear.

23) One year ago, my daughter was raped. She was only 13 years old. She is a US citizen but I am not, and I was afraid to report it to the police for fear of my legal status; I was afraid we could be separated at the time when she needed me most. Many months later I did report the rape, but by then the assailant had fled. I can't tell you how much this has affected my daughter, our family. It has changed our whole lives. My daughter lives in fear that she will meet with him again.



## Attachment 2

### CTO Research

#### State Level

- In 2013, Colorado state repeals House bill 13-1258, making it no longer illegal to prohibit a peace officer, local official or municipal employee from communicating or cooperating with federal officials with regard to the immigration status of any person within this state. Repeal cited as having been done because of “importance of importance of building trust in communities and conserving local government resources for other matters.

#### Colorado Jurisdictions

- Boulder adopted an emergency ordinance declaring itself a sanctuary city in January of 2017. They also stated that there is nothing in their city code that says employees won’t follow federal law. Using the term “undocumented” over illegal aliens, they further clarify:
  - *“There are several reasons for the choice of this term. First, it is not a crime to remain in the United States without complying with the immigration laws. It is a civil violation, punishable by deportation. It is a crime to enter the country illegally or to enter after being subjected to a deportation order. Many undocumented person fall into the civil violation category and not the criminal one. Labeling all undocumented persons as ‘illegal’ is over-inclusive.”* (CITY OF BOULDER, CITY COUNCIL MEETING AGENDA (Jan. 3, 2017).)
- More research needed to see if Denver adopted a sanctuary city ordinance—but Mayor Michael Hancock has said, “We’re not a sanctuary city,” and “We will value residents of this city. We won’t take any unlawful or unconstitutional acts against residents of the city of Denver, and it is our goal to make sure that people in this city feel safe and know that this is a city that is open, welcoming and inclusive.”
- Various municipalities across the state agree that holding someone without a warrant is unconstitutional and say they are not violating federal law when declining to hold people for immigration authorities, declining to ask about immigration status and declining to participate in immigration-related investigations.
- Lafayette passed a resolution that stops short of calling themselves a sanctuary city but is really worth taking a look at – also attached to this email. Great language and intent: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, REAFFIRMING LAFAYETTE’S COMMITMENT TO BUILD A DIVERSE, INCLUSIVE AND JUST COMMUNITY ENSURING EQUAL PROTECTION AND SERVICES FOR ALL RESIDENTS
- No ordinance or resolution, but Westminster explicitly states on their website the city embrace its diverse community and strives to welcome all residents. They also indicate that local law enforcement officers do not inquire about immigration status.
- Likewise no ordinance or resolution, Aurora displays a citizenship and immigration page on its website (<https://www.auroragov.org/cms/one.aspx?portalId=1881221&pageId=3321489>) with

information on such topics as where to find government services, tips and resources for taking a naturalization exam, esl class locations and more.

**CITY OF LAFAYETTE  
RESOLUTION NO. 2016-96**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, REAFFIRMING  
LAFAYETTE'S COMMITMENT TO BUILD A DIVERSE, INCLUSIVE AND JUST COMMUNITY  
ENSURING EQUAL PROTECTION AND SERVICES FOR ALL RESIDENTS**

**WHEREAS**, the Lafayette City Council is committed to fostering and ensuring equity, social justice, and freedom from persecution, and is committed to protect the human rights of all persons regardless of race, class, gender, ethnic heritage, religious belief, LGBTQ identification, ability or immigration status; and

**WHEREAS**, Immigrants are a vital part of the Lafayette community, and make significant contributions to the arts, culture, business and education in our City; and

**WHEREAS**, the Lafayette community works to build a diverse and inclusive community that does not tolerate any act of racism, oppression, intimidation, harassment or racial profiling toward another individual; and

**WHEREAS**, Lafayette authorities are committed to upholding the law and providing equal protection and quality service to all members of our community, regardless of their immigration status; and

**WHEREAS**, Law enforcement needs the trust and confidence of the community to be successful, and the threat of deportation without criminal offense undermines the willingness of the immigrant community to share information with law enforcement that is crucial to public safety and their own personal safety; and

**WHEREAS**, A growing number of cities in the country have reaffirmed their obligation to further the interests of American citizens by urgently implementing a humanitarian immigration policy that keeps families together and respects the right of all workers to support their families.

**NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF LAFAYETTE:**

1. That the City of Lafayette affirms the basic human rights and dignity of every human being; and be it further resolved
2. That the City Council of Lafayette affirms our continued support for the civil rights of our immigrant population; and the distinction and separation between local law enforcement authority and federal immigration authority; and be it further resolved
3. To foster an environment with policies that promote meaningful cultural, economic, community, and civic participation by immigrants, ensuring that Lafayette is a

welcoming and inclusive place for people of all backgrounds and identities; and be it further resolved

4. To reaffirm that local funds and resources are not used to enforce federal immigration laws, and local authorities have actively committed not to seek out and persecute individuals within the city limits because of their documented status; and be it further resolved
5. Unless otherwise required by law, or by court order, Council directs the implementation of a citywide policy whereby no city authority or employee shall inquire into the immigration status of any person, or engage in activities designed to ascertain the immigration status of any person; and be it further resolved
6. To reject the use of the word "illegal" to describe human beings and the use of the word "aliens" to describe immigrants and hereby adopts the language "undocumented" when referring to those who do not have federally recognized resident status and "immigrant" to refer to those who have migrated here from another country.

**RESOLVED AND PASSED THIS 6<sup>TH</sup> DAY OF DECEMBER, 2016**

CITY OF LAFAYETTE:

\_\_\_\_\_  
Christine Berg, Mayor

ATTEST:

\_\_\_\_\_  
Susan Koster, CMC  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
David S. Williamson, City Attorney

## Attachment 3

### AMENDING CHAPTER 13 OF THE CITY CODE TO ADD A NEW ARTICLE III STRENGTHENING COMMUNITY TRUST Revised May 11, 2017

WHEREAS, Fort Collins is a city striving to respect the rights of, and provide equal services to, all individuals regardless of race, ethnicity, or immigration status; and

WHEREAS, Fort Collins is a city striving to promote community safety, protect witnesses and victims, prevent racial profiling and profiling based on immigration status, prevent pretextual arrests, promote tolerance, and allow people to do their jobs; and

WHEREAS, increased incidences of intolerance and hate against immigrants, or those perceived to be immigrants, have raised levels of fear in our non-citizen community members; and

WHEREAS, non-citizen residents of Fort Collins are fearful of contacting law enforcement to report crimes and are hesitating to come forward as victims and witnesses of crimes; and

WHEREAS, our community is safer when all community members have trust in city employees, including law enforcement, and when victims and witnesses of crimes report those crimes; and

WHEREAS, the enforcement of civil immigration laws fall exclusively within the authority of United States Immigration and Customs Enforcement; and

WHEREAS this ordinance does nothing to change or limit Federal immigration enforcement and does not designate Fort Collins a sanctuary city; and

WHEREAS, this ordinance is an effective way to guide city officials and employees in adhering to federal law while protecting the safety and health of all members of the Fort Collins community.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS, COLORADO as follows:

Section 1. That Chapter 13 of the City Code is hereby amended by adding thereto a new Article III to read as follows:

#### **ARTICLE III. DISCRIMINATION BASED ON IMMIGRATION STATUS**

##### **Sec. 13-30. Discrimination based on immigration status prohibited.**

(a) For the purposes of this section, the term "city employee" shall mean all City of Fort

Collins employees, elected city officials, authorized city volunteers, and members of city boards and commissions.

(b) No city employee shall inquire into the immigration status, citizenship, or country of origin of any person, or engage in activities designed to ascertain the immigration status of any person, while the city employee is acting within the scope of his or her employment with the city. As used in this subsection, "any person" shall include, but not be limited to, victims and witnesses of crime.

(c) No city employee shall stop, question, or detain any individual solely because of the individual's real or perceived national origin, foreign appearance, inability to speak English, suspected immigration status, race, or religion.

(d) No city employee shall use city resources or personnel for the purpose of detecting or apprehending persons whose only violation of law is or may be being an undocumented immigrant, being out of immigration status, illegally residing in the United States, or otherwise assisting in the enforcement of Federal immigration law.

(e) No agent or agency of the city shall disclose information regarding the citizenship or immigration status of any person unless required to do so by legal process, such disclosure has been authorized in writing by the individual to whom such information pertains, or if the individual is a minor or otherwise not legally competent, by the individual's parents or guardian, or unless required by State or Federal law.

(f) The City of Fort Collins shall not perform the work of federal immigration officials and shall not enter into any agreements with immigration enforcement officials pursuant to Section 287(g) of the Immigration and Nationality Act.

(g) To the extent Immigration and Customs Enforcement (ICE) or has been granted access to city facilities, individuals with whom ICE engages will be notified that they are speaking with ICE, and ICE agents shall be required to identify themselves and make their badges visible at all times while in city facilities.

(h) Notwithstanding the prohibitions set forth in subsections (b) through (d) above, the following activities of city employees are expressly permitted and such activities shall not constitute a violation of this section:

- (1) Immigration status information may be solicited when specifically required by any city, state, or federal law or program guidelines as a condition of eligibility for the service sought. City employees are to carry out their regular duties for the purpose of administering general services and programs.



- (2) Immigration status information may be solicited for the purpose of completing I-9 forms, and, when relevant, in making hiring and payroll withholding decisions. City employees may complete I-9 form and documents forms, may question a person regarding the I-9 form and documents supporting the I-9 form, and may allow federal authorities to audit the I-9 forms as allowed by law. City employees shall comply with any properly issued subpoena for the production of documents or witnesses, even if related to immigration issues or other security issues.
- (3) A City employee may ask a person for identification, if such inquiry is reasonably related to the performance of the employee's duties, even if the person's response to the inquiry is to produce immigration status information.
- (4) Immigration status information may be solicited when it is relevant to threatened or actual civil litigation, or administrative proceedings.
- (5) Immigration status information may be solicited of suspects only when it is relevant to the investigation or prosecution of a violation of a criminal statute. For the purposes of this exception, "criminal statute" shall mean a felony or misdemeanor offense as defined by federal, state or local law.
- (6) This ordinance is to be construed in accordance with 8 U.S.C. §1373(a) which provides "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, [ICE] information regarding the citizenship or immigration status, lawful or unlawful, of any individual."
- (7) Fort Collins Police Services shall not engage in, assist, or support immigration enforcement except as follows:
  - To keep the peace while ICE performs their duties when there is an articulable safety concern; or
  - When such services are required to safely execute a criminal warrant or court order issued by a federal or state judge.
  - Sending to ICE, or receiving from ICE, information regarding the citizenship or immigration status of an individual as provided in Paragraph 5.

(i) For the purposes of establishing identity a city employee shall, to the extent permitted by state and federal law\*, accept identification in the form of a photo identification in the form of a photo identity document issued by the person's nation of origin, such as a driver's license, passport, or matricula consular, and shall not subject the person to a higher level of scrutiny or

different treatment than if the person had provided a Colorado driver's license. This provision shall not apply when federal, state, or local law requires a higher level of identification.

(j) The City and its employees will serve all residents. City services will be accessible to all residents, regardless of immigration status or county of origin. No department, agency, commission, officer, or employee of the City can withhold services based on several identities, including, but not limited to ancestry, race, ethnicity, national origin, color, age, sex, sexual orientation, gender variance, marital status, physical or mental disability, or religion.

(k) All City agencies that provide direct public services shall ensure meaningful access to such services by taking reasonable steps to develop and implement agency-specific language assistance plans regarding persons with limited English proficiency (LEP).

(l) Upon the request of the person being questioned, a City employee who is lawfully questioning a person about the person's immigration status shall provide the person with the reasons for requesting such information.

Section 2. The implementation and evaluation of this ordinance will take place in the following manner:

(a) The City Manager shall implement an ongoing training and educational program to inform city employees and members of the community regarding the requirements of this Ordinance.

(b) The City Manager shall charge an existing city department with the duty of receiving reports of violations of this ordinance. The Human Relations Commission shall also receive such reports.

(c) Information regarding methods to report violations of this ordinance shall be posted in all city facilities.

\*See, for example, section 24-72-1-101, et seq., Colorado Revised Statutes, regarding identification required in the provision of city services and in the issuance of city licenses, permits, and official documents.

## **Community Trust Ordinance Key Points**

Revised May 7, 2017

**Overview:** While Fort Collins strives to be a welcoming city for everyone, Fuerza Latina, a long-standing local nonprofit comprised of immigrants and their allies, has identified the need to strengthen trust between city service providers and our immigrant community by eliminating unnecessary inquiries into immigration status.

Without a healthy level of trust in the City, immigrants of any kind are less likely to report crimes, provide testimony, or aid in police investigation. They are also hesitant to access important health and human services. When this happens the health and safety of all communities in Fort Collins are negatively affected.

### **Key Points:**

- Supports and aligns with how the City of Fort Collins already generally operates. It simply provides clarity and ensures city employees and officials are consistent in the performance of their duties
- Sends a clear message to everyone in our city that we value the safety of all members of our community
- Would strengthen relationships between immigrant families and City service providers
- Is supported by the local immigrant community as well as their allies
- Would support victims and witnesses of crimes, thereby facilitating police investigations and contributing to the prevention of future crimes
- Consistent with best practices in community policing and recommendations by national organizations that study this issue
- Does not, in any way, limit or prevent the City from complying with State and Federal laws. It does not designate Fort Collins as a sanctuary city
- Is consistent with the City's Social Sustainability Strategic Plan Goal B.1 "To promote and maintain a welcoming, inclusive community where people feel connected." and Action item 2.B: "Research existing partner and community programs to help inform refugee and immigrant populations of their legal rights and responsibilities; seek opportunities to create programs where none currently exist."

### **Positive outcome for us as a community:**

- Reinforces our values as a city that is welcoming and supportive of all its community members
- Promotes trust and safety within the community
- Reduces barriers to reporting criminal activity and crimes, thereby improving community safety overall
- Reduces costs and risks to the city by focusing resources on local concerns and not areas of Federal jurisdiction
- Provides clear guidelines to city officials/employees thereby helping to avoid confusion and lighten workload for city employees

For more info: [info@fccan.org](mailto:info@fccan.org) 970.419.8944 (English); 970.472.1501 (Spanish)



## Procurement and Contractor Policies

### Purchasing Services Agreement and Professional Services Agreement

The City's Services Agreement and Professional Services Agreement include a contract provision which is a "prohibition against employing illegal aliens". This provision is a requirement of the Colorado Revised Statute (C.R.S) Section 8-17.5-101 et. seq. which prohibits the City from entering into a "public contract for services" with a contractor who knowingly employs or subcontracts with illegal aliens and the state requires the City to include certain illegal alien provisions in all of its "contracts for services".

The provision requires the City's contractor to notify the City within three (3) days that contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien. The provision also requires the City's contractor to terminate the subcontract within three (3) days in the event the subcontractor does not cease employing or contracting with the illegal alien or provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

The statutes do not provide any kind of enforcement action that can be taken against the City or impose any penalty on the City for failing comply with the statute.

The City does not perform any action to enforce and/or verify the contractor's compliance to the statute.

### New Vendor Set-Up

The City requires all new vendors/contractors to complete a Department of the Treasury Internal Revenue Service Form W-9, Request for Taxpayer Identification Number and Certification. The W-9 requires a social security number or employer identification number. The W-9 also includes a requirement to certify that "I am a U.S. citizen or other U.S. person (defined below)". The W-9 is required for federal income tax reporting.



## **Service Agreement and Professional Services Agreement Contract Provision**

*Prohibition Against Employing Illegal Aliens.* Pursuant to C.R.S. Section 8-17.5-101 et. seq., the Professional represents and agrees that:

- a. *As of the date of this Agreement:*
  - 1. *Professional does not knowingly employ or contract with an illegal alien who will perform work under this Agreement; and*
  - 2. *Professional will participate in either the e-Verify program created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, administered by the United States Department of Homeland Security ( "e-Verify Program") or the Department Program, an employment verification program established pursuant to C.R.S. Section 8-17.5-102(5)(c) ("Department Program") in order to confirm the employment eligibility of all newly hired employees to perform work under this Agreement.*
- b. *Professional shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or knowingly enter into a contract with a subcontractor that knowingly employs or contracts with an illegal alien to perform work under this Agreement.*
- c. *Professional is prohibited from using the e-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.*
- d. *If Professional obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Professional shall:*
  - 1. *Notify such subcontractor and the City within three (3) days that Professional has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and*
  - 2. *Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to this section the subcontractor does not cease employing or contracting with the illegal alien; except that Professional shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.*
- e. *Professional shall comply with any reasonable request by the Colorado Department of Labor and Employment (the "Department") made in the course of an investigation that the Department undertakes or is undertaking pursuant to its authority established in C.R.S. Section 8-17.5-102 (5).*
- f. *If Professional violates any provision of this Agreement pertaining to the duties imposed by C.R.S. Section 8-17.5-102, the City may terminate this Agreement. If this Agreement is so terminated, Professional shall be liable for actual and consequential damages to the City arising out of Professional's violation of C.R.S. Section 8-17.5-102.*
- g. *The City will notify the Office of the Colorado Secretary of State if Professional violates any provision of paragraph 19 and the City terminates the Agreement for such breach.*





## **Bias-Motivated Crimes**

### **338.1 PURPOSE AND SCOPE**

The Fort Collins Police Services recognizes and places a high priority on the rights of all individuals guaranteed under the Constitution and the laws of this state. When such rights are infringed upon by violence, threats or other harassment, this Agency will utilize all available resources to see that justice is served under the law. This Policy has been developed to meet or exceed the provisions of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act.

#### **338.1.1 FEDERAL JURISDICTION**

Federal law prohibits discrimination-based acts. The U.S. Department of Justice (DOJ) may obtain jurisdiction over crimes of violence where the perpetrator has selected the victim because of the person's actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity or disability (18 USC 245).

### **338.2 DEFINITIONS**

Definitions related to this Policy include:

**Bias-motivated crime** - A person commits a bias-motivated crime if, with the intent to intimidate or harass another person because of that person's actual or perceived race, color, religion, ancestry, national origin, physical or mental disability, or sexual orientation, he/she (CRS § 18-9-121(2)):

- (a) Knowingly causes bodily injury to another person.
- (b) By words or conduct, knowingly places another person in fear of imminent lawless action directed at that person or that person's property, and such words or conduct are likely to produce bodily injury to that person or damage to that person's property.
- (c) Knowingly causes damage to or destruction of the property of another person.

### **338.3 PREVENTING AND PREPARING FOR LIKELY BIAS-MOTIVATED CRIMES**

While it is recognized that not all crime can be prevented, this Agency is committed to taking a proactive approach to preventing and preparing for likely bias-motivated crimes by among other things:

- (a) Making an affirmative effort to establish contact with persons and groups within the community who are likely targets of bias-motivated crimes to form, and cooperate with, prevention and response networks.
- (b) Providing victim assistance and follow-up as outlined below, including community follow-up.
- (c) Educating community and civic groups about bias-motivated crime laws.

### **338.4 PROCEDURE FOR INVESTIGATING BIAS-MOTIVATED CRIMES**

Whenever any employee receives a report of a suspected bias-motivated crime or other activity that reasonably appears to involve a potential bias-motivated crime, the following should occur:

# Fort Collins Police Services

## Policy Manual

### *Bias-Motivated Crimes*

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- (a) Officers will be promptly assigned to contact the victim, witness or reporting party to investigate the matter further as circumstances may dictate.
- (b) A supervisor should be notified of the circumstances as soon as practicable.
- (c) Once "in progress" aspects of any such situation have been stabilized (e.g., treatment of victims or apprehension of present suspects), the assigned officers will take all reasonable steps to preserve available evidence that may tend to establish that a bias-motivated crime was involved.
- (d) The assigned officers will interview available witnesses, victims, and others to determine what circumstances, if any, indicate that the situation may involve a bias-motivated crime. No victim of, or a witness to, a bias-motivated crime may be detained or turned over to federal authorities exclusively for any actual or suspected immigration violation unless that person is charged with or convicted of a crime under state law.
- (e) Depending on the situation, the assigned officers or supervisor may request additional assistance from investigators or other resources to further the investigation.
- (f) The assigned officers will include all available evidence indicating the likelihood of a bias-motivated crime in the relevant reports. All related reports will be clearly marked as "Bias-Motivated Crimes" and, absent prior approval of a supervisor, will be completed and submitted by the assigned officers before the end of the shift.
- (g) The assigned officers should also make reasonable efforts to assist the victim by providing a Victim's Rights Pamphlet and available information on local assistance programs and organizations as required by the Victim Assistance Policy.
- (h) The assigned officers and supervisor should take reasonable steps to ensure that any such situation does not escalate further and should provide information to the victim regarding legal aid, e.g., a possible Temporary Restraining Order through the courts or District Attorney.

#### **338.5 CRIMINAL INVESTIGATIONS DIVISION RESPONSIBILITIES**

If a case is assigned to the Criminal Investigations Division, the assigned investigator will be responsible for following up on the reported bias-motivated crime by:

- (a) Coordinating further investigation with the District Attorney and other appropriate law enforcement agencies.
- (b) Maintaining contact with the victim and other involved individuals, as needed.
- (c) Maintaining statistical data and tracking of suspected bias-motivated crimes as indicated or required by state law.

# Fort Collins Police Services

## Policy Manual

### ***Bias-Motivated Crimes***

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#### **338.5.1 STATE BIAS-MOTIVATED CRIME REPORTING**

This Agency shall report bias-motivated crime offenses in the form and manner and at regular intervals as prescribed by rules adopted by the Department of Public Safety. This shall be conducted by the Records Manager.

#### **338.5.2 FEDERAL BIAS-MOTIVATED CRIME REPORTING**

The Records Manager should include bias crime data reporting within the National Incident Based Reporting System (NIBRS), Uniform Crime Report (UCR) and Summary Reporting System (SRS) reports pursuant to Records procedures and in compliance with (28 USC § 534(a)).

#### **338.6 TRAINING**

All officers of this Agency shall receive training on bias-motivated crime recognition and investigation and shall attend annual training which incorporates a bias-motivated crime training component.



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## Expectations of Conduct

### 340.1 PURPOSE AND SCOPE

This policy establishes standards of conduct that are consistent with the values and mission of the department and are expected of its employees. The standards contained in this policy are not intended to be an exhaustive list of requirements and prohibitions but they do identify many of the important matters concerning employee conduct. Employees are also subject to provisions contained throughout this manual as well as additional guidance on conduct that may be disseminated by the department or the employee's supervisors.

This policy applies to all employees (full- and part-time) and volunteers.

#### 340.1.1 POLICY

It is the Policy of the Agency that all employees of our organization are expected to hold themselves to higher standards of conduct than those expected of the general public. Except for the rules that are identified as specific only to police officers and community service officers, this Policy applies to all employees of the Agency.

#### 340.1.2 ETHICS

As police employees, we are endowed with a special level of trust, and we are all equally responsible for establishing, preserving, and promoting integrity and ethical conduct.

High ethical standards must prevail in all our interactions with citizens and with each other, and we must strive to avoid even the appearance of a conflict of interest or compromise of our standards.

### 340.2 DISCIPLINE POLICY

The continued employment of every employee of this Agency shall be based on conduct that reasonably conforms to the guidelines set forth herein. Failure of any employee to meet the guidelines set forth in this Policy, whether on or off-duty, may be cause for disciplinary action.

An employee's off-duty conduct shall be governed by this Policy to the extent that it is related to acts that may materially affect or arise from the employee's ability to perform official duties, that it may indicate that the employee is unfit for his/her position or that brings discredit or harm to the professional image or reputation of the Agency, its employees, the City or the law enforcement profession.

#### 340.2.1 LAWFUL ORDERS

Employees shall comply with lawful Directives and orders from any supervisor or person in a position of authority absent a reasonable and valid justification.

- (a) Agency employees shall obey the lawful orders of supervisors and, regardless of their rank, they shall respond appropriately to instructions given by the on-duty dispatcher. They shall perform all duties required of them by supervisors, whether such duties are specifically assigned to them or are a part of Agency Directives, Policies, procedures, and regulations.

# Fort Collins Police Services

## Policy Manual

### *Expectations of Conduct*

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- (b) Should an order conflict with a previously issued order or with any Agency standing order or with provisions of the Agency Directives, Policies, procedures, or regulations, the employee to whom such order is issued shall respectfully call attention to the conflict.
  - 1. If the person giving the order does not make changes to resolve the conflict, the new order shall stand, and the responsibility shall be his/hers.
  - 2. The employee obeying the new order shall not be held responsible for disobedience of the previous order.
- (c) If an Agency employee is given an order which in his/her opinion is either illegal or not in the best interest of the Agency, they may, in accord with their own conscience, choose to refuse to obey the order.
  - 1. However, the employee assumes full responsibility for their decision and if, on review, he/she is found to have been in error, he/she may be subject to disciplinary action.

#### **340.3 CONDUCT THAT MAY RESULT IN DISCIPLINE**

All employees must remember that they are public representatives of the Agency and conduct themselves accordingly. Employees share the responsibility of maintaining the Agency reputation. Employees who tolerate misconduct are, in effect, condoning and participating in that misconduct and may be held accountable.

Employees shall conduct themselves, whether on or off-duty, in accordance with the Constitution of the United States, the Colorado Constitution and all applicable laws, ordinances and rules enacted or established pursuant to legal authority.

Although it is impossible to predict every possible type of employee behavior that may be cause for corrective action, the following are some of the types of conduct which could lead to disciplinary action. Any of the following actions may be deemed sufficient cause for discipline up to and including termination of employment:

- (a) Failure to perform the duties of rank or assignment in the manner required by verbal or written Agency Policies, procedures, Directives, and regulations, either willfully or through negligence, incompetence, or cowardice.
- (b) Violation of any Agency or City Policy, procedure, Directive, rule, or order. Employees are expected to familiarize themselves with this Manual and any other written Directives, Policies or procedures of the Agency and the City.
- (c) Offensive or disorderly conduct.
- (d) Knowing departure from the truth in connection with any official duties or matters associated with Agency responsibilities.
- (e) Intimidation of any person under color of authority for personal reasons or use of position for personal gain or improper influence.
- (f) Violation of a City ordinance or state or federal statute.

# Fort Collins Police Services

## Policy Manual

### *Expectations of Conduct*

---

- (g) Sleeping while on duty, or intentionally making oneself unavailable for assigned duties.
- (h) Appropriating any evidence, found property, or Agency or City property for his/her personal use.
- (i) Soliciting or accepting a bribe or gratuity that may create a real or perceived expectation of preferential treatment.
- (j) Careless handling or loss of City property.
- (k) Feigning sickness or injury to avoid duty, or failure to follow job duty restrictions issued by a doctor or other health care provider.
- (l) Abuse of authority in order to force a settlement or in any way inappropriately influence a civil or criminal matter.
- (m) Use of unnecessary force in the performance of duty or the mental or physical abuse of any person in custody.
- (n) Use of any controlled substance, except according to a prescription and under the supervision of an accredited and licensed medical doctor or dentist. A medical marijuana recommendation is not a prescription, and the use of medical marijuana by employees is prohibited.
- (o) Harassment or intimidation of any person, including harassment or intimidation based on race, creed, color, sex, age, religion, national origin or ancestry, physical or mental disability, or sexual orientation.
- (p) Any form of bias-based policing.
- (q) Bringing sexually explicit materials into the work place when there is no legitimate Agency purpose. Sexually explicit materials shall mean any writings, pictures, drawings, electronic reproductions, or other visual reproductions depicting the genitals, depicting sexual acts, or depicting an image which could reasonably be construed as conveying a sexually erotic theme.
- (r) Any conduct by an employee on or off-duty that tends to impair the effectiveness, efficiency or morale of the Agency, may cause the public to lose confidence in the police department, violates the public trust or negatively affects the reputation of the Agency or any employee.
- (s) Violating the Constitutional rights of any individual.
- (t) Any conduct or circumstance that makes the employee unable to effectively perform the duties of his/her position.

#### 340.3.1 ATTENDANCE

- (a) Employees shall report for duty at the time, place, and in the attire and with the equipment specified by the Agency or by a supervisor, unless absence is authorized by a competent

# Fort Collins Police Services

## Policy Manual

### *Expectations of Conduct*

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authority. Inability to report as indicated shall be communicated to the shift supervisor prior to the scheduled reporting time.

- (b) Employees shall be punctual in reporting for duty, special assignments, court appearances, in-service classes, meetings, and other appointments.
- (c) Employees shall not leave the job to which he or she is assigned during duty hours without reasonable excuse and proper permission and approval.
- (d) Except when ill or otherwise unfit for duty, Agency employees who are off-duty shall report for duty immediately upon receipt of orders to do so.
- (e) Employees are required to have a secondary telephone device (hardwired landline, cell phone or a Voice Over Internet Protocol (VOIP) device which may be a handheld device or computer) separate from the Agency-issued communication device and to provide that current telephone number, along with their current home address, to the Agency.
  - 1. All changes shall be reported within 24 hours.

#### 340.3.2 CONDUCT

- (a) Agency employees must have articulable, factual reason(s) for engaging in any investigation. Mere personal curiosity on the part of an officer or an employee does not constitute sufficient reason to commence an investigation without supervisory approval.
- (b) Agency employees shall be attentive to and take appropriate action in response to a report, inquiry, or complaint received by the employee from a private person, unless circumstances, Policy or practice require that the matter be referred to another officer, Division, or Agency.
  - 1. When employees work to resolve community crime and disorder issues, they are encouraged to utilize a conventional problem solving strategy (e.g. the SARA Method) to address the issue.
- (c) Employees shall answer requests for information and provide requested assistance or aid the person in identifying a source for the information or assistance.
  - 1. Employees shall not belittle a seemingly trivial request, complaint, or item of information.
  - 2. Employees will conduct complete investigations and necessary follow-up as required.
- (d) Officers shall report all crime and other information of concern to the Agency that comes to their attention, whether the incident occurred inside or outside the City.
  - 1. Officers shall not repress, conceal or distort the facts of any such incident.
- (e) Officers, whether on or off-duty, observing a police emergency, or having one reported to them, shall immediately report, or have it reported, to police headquarters or Dispatch in as complete detail as possible, and assist as needed.



# Fort Collins Police Services

## Policy Manual

### Expectations of Conduct

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- (f) Employees must not use any Agency report or record for other than official Agency business, nor communicate information which may jeopardize our mission or which may endanger the safety or well-being of others.
- (g) Agency employees shall be courteous, civil, and respectful of supervisors, associates, and other persons, whether on- or off-duty.
- (h) Employees must cooperate fully and truthfully in any Agency-authorized investigation. In an administrative investigation, the procedures in Policy 1020 - Administrative Investigations shall be followed.
- (i) Employees shall not initiate any civil action for recovery of any damages or injuries incurred in the course and scope of employment without first notifying the Chief of Police of such action.
  - 1. Using Agency resources in association with any portion of an independent civil action is prohibited.
  - 2. These resources include, but are not limited to, personnel, vehicles, equipment and non-subpoenaed records.
- (j) Employees shall not seek restraining orders against individuals encountered in the line of duty without the express permission of the Chief of Police.
- (k) Employees shall promptly and fully report activities that have resulted in official contact by any other law enforcement department.
- (l) Employees shall not disclose one's status as an employee with the Agency in any way that could reasonably be perceived as an attempt to gain influence or authority for non-Agency business or activity.
- (m) The use of any information, photograph or video obtained or accessed as a result of employment with the Agency for personal or financial gain or without the express authorization of the Chief of Police or an authorized designee may result in discipline under this Policy.
- (n) Employees shall not engage in on-duty sexual activity including, but not limited to, sexual intercourse, excessive displays of public affection or other sexual contact. Unwelcome solicitation of a personal or sexual relationship while on-duty or through the use of one's official capacity is prohibited.
- (o) Subjecting another to any form of sexual harassment is prohibited.

#### **340.3.3 DISCRIMINATION, OPPRESSION, HARASSMENT OR FAVORITISM**

Discrimination, oppression or favoritism of any person because of age, race, color, creed, religion, sex, sexual orientation, national origin, ancestry, marital status, physical or mental disability or medical condition, or intentionally denying or impeding another in the exercise or enjoyment of any right, privilege, power or immunity, with the knowledge that the conduct is prohibited.

# Fort Collins Police Services

## Policy Manual

### *Expectations of Conduct*

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#### **340.3.4 INTOXICANTS**

Violations of Policy 1012 - Alcohol and Drug Use, and City Policies 8.11 - Controlled Substances and Alcohol Policy - General Policy, and 8.17 - Controlled Substances and Alcohol Policy (In Compliance with FMCSA Regulations) are prohibited and subject to discipline up to and including termination.

#### **340.3.5 PERFORMANCE**

The following types of performance are prohibited:

- (a) Making false, misleading or malicious statements that are reasonably calculated to harm or destroy the reputation, authority or official standing of the Agency or employees thereof.
- (b) The falsification of any work-related records, the making of misleading entries or statements with the intent to deceive or the willful and unauthorized removal, alteration, destruction and/or mutilation of any Agency record, public record, book or paper document.
- (c) Wrongfully using, loaning, selling, allowing unauthorized use, giving away or appropriating any Agency badge, uniform, identification card or property for personal use, personal gain or any other improper or unauthorized use or purpose.
- (d) Carrying, while on the premises of the work place, any firearm or other lethal weapon that is not required for the performance of the employee's current job duties or authorized by his/her appointing authority.
- (e) The receipt or acceptance of a reward, fee or gift from any person for service incident to the performance of the employee's duties.
- (f) Attempted or actual theft of Agency property, misappropriation or misuse of public funds, property, personnel or services or the property of others, or the unauthorized removal or possession of Agency property or the property of another person.
- (g) Failure to disclose or misrepresenting material facts or the making of any false or misleading statement on any application, examination form or other official document, report or form, or during the course of any work-related investigation.
- (h) Unless authorized by the Chief of Police, Deputy Chief or Division Director Agency employees shall not make an audio and/or video recording of a conversation or meeting with another Agency employee unless all Agency employees participating in the conversation or meeting are made aware of the recording at its inception.
- (i) In order to avoid any appearance of impropriety, and in order to avoid the possible sully of the character or reputation of individuals and the Agency, Agency employees shall not associate with any person who is currently charged with or convicted of a felony when the employee knows or reasonably should have known of the status of the person. This provision shall not be applicable to association directly related to official police duties or to association with a member of the employee's immediate family (parent, spouse, civil union partner, child, or grandchild, including step relationships in those categories). The Chief of Police may

# Fort Collins Police Services

## Policy Manual

### Expectations of Conduct

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grant exceptions to this section when the Chief concludes, in his or her sole discretion, that the purposes of this restriction would not be significantly impaired by the granting of the exception.

- (j) Officers, who injure a person or animal, or damage public or private property, shall immediately report the circumstances to a supervisor.

#### 340.3.6 SAFETY

Employees are expected to contribute toward maintaining a safe work environment. The following behavior may result in disciplinary action:

- (a) Failure to observe posted rules, signs and written or oral safety instructions while on-duty and/or within Agency facilities or failure to use required protective clothing or equipment.
- (b) Knowingly failing to report any on-the-job or work-related accident or injury within 24 hours.
- (c) Substantiated employee record of unsafe or improper driving habits or actions in the course of employment.
- (d) Failure to maintain good physical condition sufficient to adequately and safely perform law enforcement duties.
- (e) Any personal action contributing to involvement in a preventable traffic collision, or other unsafe or improper driving habits or actions in the course of employment.
- (f) Violating Agency safety standards or safe working practices.

#### 340.3.7 SUPERVISOR RESPONSIBILITIES

If an employee's conduct is a cause for discipline, a supervisor shall inform the employee promptly and specifically of the improper conduct. Supervisors and managers are required to follow all Policies and procedures and may be subject to discipline for:

- (a) Failure to take appropriate action to ensure that employees adhere to the Policies and procedures of this Agency and that the actions of all personnel comply with all laws.
- (b) Failure to report in a timely manner any known misconduct of an employee to his/her immediate supervisor or to document such misconduct appropriately or as required by Policy.
- (c) The unequal or disparate exercise of authority on the part of a supervisor toward any employee for malicious or other improper purpose.



## Mutual Aid and Outside Agency Assistance

### 352.1 PURPOSE AND SCOPE

This Policy provides guidance to officers in the request of or answering the request for assistance from another law enforcement department.

It is the Policy of this Agency to provide assistance whenever reasonably possible. Assistance shall be consistent with the applicable laws and Policies of this Agency when another law enforcement department requests assistance with an arrest or detention of any person. This Agency may also request an outside department to provide assistance (CRS § 29-5-104).

The Agency may at the discretion of the Chief of Police establish an agreement for reciprocal law enforcement with another department, including those of neighboring states, provided those agreements meet statutory requirements pursuant to CRS § 29-1-206. An agreement may include:

- (a) Assisting other peace officers in the line of their duties and within the course of their employment.
- (b) Exchanging Agency peace officers with peace officers of another department on a temporary basis.

### 352.2 ASSISTING OUTSIDE AGENCIES

Generally, calls for assistance from other agencies are received via radio transmission and are routed to the Watch Commander or patrol supervisor for approval. Any such response to assist an outside department should be considered for authorization pursuant to law or an established mutual aid plan (see generally CRS § 24-33.5-713).

- (a) When an authorized employee of an outside department requests the assistance of this Agency in taking a person into custody, available officers shall respond and assist in making a lawful arrest. If an officer receives a request in the field for assistance, that officer shall notify a patrol supervisor. Arrestees may be temporarily detained by this Agency until arrangements for transportation are made by the outside department. A police report will be completed to report action taken by Agency personnel when:
  - 1. An Agency police officer arrests a person;
  - 2. When the use of force is necessary to effect or assist in any arrest;
  - 3. At the request of the department asking for assistance; and
  - 4. When directed by a supervisor.

### 352.3 REQUESTING ASSISTANCE FROM OUTSIDE AGENCIES

If assistance is needed from another department, the employee requesting assistance shall first notify a supervisor of his/her intentions. The supervisor should direct assisting personnel to where they are needed and to whom they should report when they arrive.

# Fort Collins Police Services

## Policy Manual

### *Mutual Aid and Outside Agency Assistance*

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The supervisor may request Dispatch to assign a mutual aid radio frequency for use by all involved agencies so that communication can be coordinated as needed.

If necessary, reasonable effort should be taken to provide radio equipment capable of communicating on the assigned frequency to any personnel who do not have compatible radios.

In the event of circumstances requiring federal law enforcement assistance, the Chief of Police or his or her designee will be responsible for contacting the appropriate federal agency.

An additional resource to consider when obtaining mutual aid assistance is the Colorado State Emergency Resource Mobilization Plan (CSERMP) available from <https://mobilization.state.co.us/documents/CSERMP.pdf>.

#### **352.4 MANDATORY SHARING**

Equipment and supplies purchased with federal funds or grants with contingent sharing requirements should be documented and updated as necessary by the Patrol Administrative Lieutenant. The conditions relative to sharing, the training requirements connected to the use of the supplies and equipment, and those trained in the use of the supplies and equipment should be included in the documentation.

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## Limited English Proficiency Services

### 368.1 PURPOSE AND SCOPE

This policy provides guidance to members when communicating with individuals with limited English proficiency (LEP) (42 USC § 2000d).

#### 368.1.1 DEFINITIONS

See Policy 107 - Definitions.

### 368.2 POLICY

It is the policy of the Fort Collins Police Services to reasonably ensure that LEP individuals have meaningful access to law enforcement services, programs and activities, while not imposing undue burdens on its members.

The Agency will not discriminate against or deny any individual access to services, rights or programs based upon national origin or any other protected interest or right.

### 368.3 LEP COORDINATOR

The Chief of Police shall delegate certain responsibilities to an LEP Coordinator. The LEP Coordinator shall be appointed by, and directly responsible to, the Patrol Deputy Chief or the authorized designee.

The responsibilities of the LEP Coordinator include, but are not limited to:

- (a) Coordinating and implementing all aspects of the Fort Collins Police Services' LEP services to LEP individuals.
- (b) Developing procedures that will enable members to access LEP services, including telephonic interpreters, and ensuring the procedures are available to all members.
- (c) Ensuring that a list of all qualified bilingual members and authorized interpreters is maintained and available to each Watch Commander and Communications Manager. The list should include information regarding the following:
  1. Languages spoken
  2. Contact information
  3. Availability
- (d) Ensuring signage stating that interpreters are available free of charge to LEP individuals is posted in appropriate areas and in the most commonly spoken languages.
- (e) Reviewing existing and newly developed documents to determine which are vital documents and should be translated, and into which languages the documents should be translated.

# Fort Collins Police Services

## Policy Manual

### Limited English Proficiency Services

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- (f) Annually assessing demographic data and other resources, including contracted language services utilization data and community-based organizations, to determine if there are additional documents or languages that are appropriate for translation.
- (g) Identifying standards and assessments to be used by the Agency to qualify individuals as qualified bilingual members or authorized interpreters.
- (h) Periodically reviewing efforts of the Agency in providing meaningful access to LEP individuals, and, as appropriate, developing reports, new procedures, or recommending modifications to this policy.
- (i) Receiving and responding to complaints regarding department LEP services.
- (j) Ensuring appropriate processes are in place to provide for the prompt and equitable resolution of complaints and inquiries regarding discrimination in access to department services, programs and activities.

#### **368.4 FOUR-FACTOR ANALYSIS**

Since there are many different languages that members could encounter, the Agency will utilize the four-factor analysis outlined in the U.S. Department of Justice (DOJ) Guidance to Federal Financial Assistance Recipients, available at the DOJ website, to determine which measures will provide meaningful access to its services and programs. It is recognized that law enforcement contacts and circumstances will vary considerably. This analysis, therefore, must remain flexible and will require an ongoing balance of four factors, which are:

- (a) The number or proportion of LEP individuals eligible to be served or likely to be encountered by department members, or who may benefit from programs or services within the jurisdiction of the Agency or a particular geographic area.
- (b) The frequency with which LEP individuals are likely to come in contact with department members, programs or services.
- (c) The nature and importance of the contact, program, information or service provided.
- (d) The cost of providing LEP assistance and the resources available.

#### **368.5 TYPES OF LEP ASSISTANCE AVAILABLE**

Fort Collins Police Services members should never refuse service to an LEP individual who is requesting assistance, nor should they require an LEP individual to furnish an interpreter as a condition for receiving assistance. The Agency will make every reasonable effort to provide meaningful and timely assistance to LEP individuals through a variety of services.

The Agency will utilize all reasonably available tools, such as language identification cards, when attempting to determine an LEP individual's primary language.

LEP individuals may choose to accept department-provided LEP services at no cost or they may choose to provide their own.



# Fort Collins Police Services

## Policy Manual

### *Limited English Proficiency Services*

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Agency-provided LEP services may include, but are not limited to, the assistance methods described in this policy.

#### **368.6 WRITTEN FORMS AND GUIDELINES**

Vital documents or those that are frequently used should be translated into languages most likely to be encountered. The LEP Coordinator will arrange to make these translated documents available to members and other appropriate individuals, as necessary.

Spanish is the language most likely to be encountered by Agency staff, based on population data of Fort Collins and results of employee surveys regarding languages most frequently encountered. A list of vital documents that have been translated to Spanish includes:

- (a) Complaint procedures
- (b) Complaint Intake forms
- (c) Complainant Rights form
- (d) Complaint Incident Summary form
- (e) Written Statement form
- (f) Advisement of Rights form
- (g) Consent to Search form
- (h) Photographic Display form
- (i) Accident Written Statement form
- (j) Domestic Violence Victim form
- (k) Pre-printed Miranda advisement cards
- (l) Victim services brochure

#### **368.7 AUDIO RECORDINGS**

The Agency may develop audio recordings of important or frequently requested information in a language most likely to be understood by those LEP individuals who are representative of the community being served.

#### **368.8 QUALIFIED BILINGUAL MEMBERS**

Bilingual members may be qualified to provide LEP services when they have demonstrated through established department procedures a sufficient level of skill and competence to fluently communicate in both English and a non-English language. Members utilized for LEP services must demonstrate knowledge of the functions of an interpreter/translator and the ethical issues involved when acting as a language conduit. Additionally, bilingual members must be able to communicate technical and law enforcement terminology, and be sufficiently proficient in the

# Fort Collins Police Services

## Policy Manual

### Limited English Proficiency Services

---

non-English language to perform complicated tasks, such as conducting interrogations, taking statements, collecting evidence or conveying rights or responsibilities.

#### **368.9 AUTHORIZED INTERPRETERS**

Any person designated by the Agency to act as an authorized interpreter and/or translator must have demonstrated competence in both English and the involved non-English language, must have an understanding of the functions of an interpreter that allows for correct and effective translation, and should not be a person with an interest in the department case or investigation involving the LEP individual. A person providing interpretation or translation services may be required to establish the accuracy and trustworthiness of the interpretation or translation in a court proceeding.

Authorized interpreters must pass a screening process established by the LEP Coordinator which demonstrates that their skills and abilities include:

- (a) The competence and ability to communicate information accurately in both English and in the target language.
- (b) Knowledge, in both languages, of any specialized terms or concepts peculiar to this department and of any particularized vocabulary or phraseology used by the LEP individual.
- (c) The ability to understand and adhere to the interpreter role without deviating into other roles, such as counselor or legal adviser.
- (d) Knowledge of the ethical issues involved when acting as a language conduit.

##### **368.9.1 SOURCES OF AUTHORIZED INTERPRETERS**

The Agency may contract with authorized interpreters who are available over the telephone. Members may use these services with the approval of a supervisor and in compliance with established procedures.

Other sources may include:

- Qualified bilingual members of this department or personnel from other City departments.
- Individuals employed exclusively to perform interpretation services.
- Contracted in-person interpreters, such as state or federal court interpreters, among others.
- Interpreters from other agencies who have been qualified as interpreters by this department, and with whom the Agency has a resource-sharing or other arrangement that they will interpret according to department guidelines.

##### **368.9.2 COMMUNITY VOLUNTEERS AND OTHER SOURCES OF LANGUAGE ASSISTANCE**

Language assistance may be available from community volunteers who have demonstrated competence in either monolingual (direct) communication and/or in interpretation or translation (as noted in above), and have been approved by the Agency to communicate with LEP individuals.

# Fort Collins Police Services

## Policy Manual

### *Limited English Proficiency Services*

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Where qualified bilingual members or other authorized interpreters are unavailable to assist, approved community volunteers who have demonstrated competence may be called upon when appropriate. However, department members must carefully consider the nature of the contact and the relationship between the LEP individual and the volunteer to ensure that the volunteer can provide neutral and unbiased assistance.

While family or friends of an LEP individual may offer to assist with communication or interpretation, members should carefully consider the circumstances before relying on such individuals. For example, children should not be relied upon except in exigent or very informal and non-confrontational situations.

#### **368.10 CONTACT AND REPORTING**

While all law enforcement contacts, services and individual rights are important, this department will utilize the four-factor analysis to prioritize service to LEP individuals so that such services may be targeted where they are most needed, according to the nature and importance of the particular law enforcement activity involved.

Whenever any member of this department is required to complete a report or other documentation, and interpretation services are provided to any involved LEP individual, such services should be noted in the related report. Members should document the type of interpretation services utilized and whether the individual elected to use services provided by the Agency or some other identified source.

#### **368.11 RECEIVING AND RESPONDING TO REQUESTS FOR ASSISTANCE**

The Fort Collins Police Services will take reasonable steps and will work with Human Resources to develop in-house language capacity by hiring or appointing qualified members proficient in languages representative of the community being served.

##### **368.11.1 EMERGENCY CALLS TO 9-1-1**

Agency members will make every reasonable effort to promptly accommodate LEP individuals utilizing 9-1-1 lines. When a 9-1-1 call-taker receives a call and determines that the caller is an LEP individual, the call-taker shall quickly determine whether sufficient information can be obtained to initiate an appropriate emergency response. If language assistance is still needed, the language is known and a qualified bilingual member is available in Fort Collins 911, the call shall immediately be handled by the qualified bilingual member.

If a qualified bilingual member is not available or the call-taker is unable to identify the caller's language, the call-taker will contact the contracted telephone interpretation service and establish a three-way call between the call-taker, the LEP individual and the interpreter.

Dispatchers will make every reasonable effort to dispatch a qualified bilingual member to the assignment, if available and appropriate.

# Fort Collins Police Services

## Policy Manual

### Limited English Proficiency Services

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While 9-1-1 calls shall receive top priority, reasonable efforts should also be made to accommodate LEP individuals seeking routine access to services and information by utilizing the resources listed in this policy.

#### **368.12 FIELD ENFORCEMENT**

Field enforcement will generally include such contacts as traffic stops, pedestrian stops, serving warrants and restraining orders, crowd/traffic control and other routine field contacts that may involve LEP individuals. The scope and nature of these activities and contacts will inevitably vary. Members and/or supervisors must assess each situation to determine the need and availability of language assistance to all involved LEP individuals and utilize the methods outlined in this policy to provide such assistance.

Although not every situation can be addressed in this policy, it is important that members are able to effectively communicate the reason for a contact, the need for information and the meaning or consequences of any enforcement action. For example, it would be meaningless to request consent to search if the officer is unable to effectively communicate with an LEP individual.

If available, officers should obtain the assistance of a qualified bilingual member or an authorized interpreter before placing an LEP individual under arrest.

#### **368.13 INVESTIGATIVE FIELD INTERVIEWS**

In any situation where an interview may reveal information that could be used as the basis for arrest or prosecution of an LEP individual and a qualified bilingual member is unavailable or lacks the skills to directly communicate with the LEP individual, an authorized interpreter should be used. This includes interviews conducted during an investigation with victims, witnesses and suspects. In such situations, audio recordings of the interviews should be made when reasonably possible. Identification and contact information for the interpreter (e.g., name, address) should be documented so that the person can be subpoenaed for trial if necessary.

If an authorized interpreter is needed, officers should consider calling for an authorized interpreter in the following order:

- An authorized department member or allied agency interpreter
- An authorized telephone interpreter
- Any other authorized interpreter

Any *Miranda* warnings shall be provided to suspects in their primary language by an authorized interpreter or, if the suspect is literate, by providing a translated *Miranda* warning card.

The use of an LEP individual's bilingual friends, family members, children, neighbors or bystanders may be used only when a qualified bilingual member or authorized interpreter is unavailable and there is an immediate need to interview an LEP individual.

# Fort Collins Police Services

## Policy Manual

### Limited English Proficiency Services

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#### **368.14 BOOKINGS**

When gathering information during the booking process, members should remain alert to the impediments that language barriers can create. In the interest of the arrestee's health and welfare, the safety and security of the facility, and to protect individual rights, it is important that accurate medical screening and booking information be obtained. Members should seek the assistance of a qualified bilingual member whenever there is concern that accurate information cannot be obtained or that booking instructions may not be properly understood by an LEP individual.

#### **368.15 COMPLAINTS**

The Agency shall ensure that LEP individuals who wish to file a complaint regarding members of this department are able to do so. The Agency may provide an authorized interpreter or translated forms, as appropriate. Complaints will be referred to the LEP Coordinator.

Investigations into such complaints shall be handled in accordance with Policy 1020 - Administrative Investigations. Authorized interpreters used for any interview with an LEP individual during an investigation should not be members of this department.

Any notice required to be sent to an LEP individual as a complaining party pursuant to Policy 1020 - Administrative Investigations should be translated or otherwise communicated in a language-accessible manner.

#### **368.16 COMMUNITY OUTREACH**

Community outreach programs and other such services offered by this department are important to the ultimate success of more traditional law enforcement duties. This department will continue to work with community groups, local businesses and neighborhoods to provide equal access to such programs and services.

#### **368.17 TRAINING**

To ensure that all members who may have contact with LEP individuals are properly trained, the Agency will provide periodic training on this policy and related procedures, including how to access department-authorized telephonic and in-person interpreters and other available resources.

The Training Sergeant shall be responsible for ensuring new members receive LEP training. Those who may have contact with LEP individuals should receive refresher training at least once every two years thereafter. The Training Sergeant shall maintain records of all LEP training provided, and will retain a copy in each member's training file in accordance with established records retention schedules.

##### **368.17.1 TRAINING FOR AUTHORIZED INTERPRETERS**

All members on the authorized interpreter list must successfully complete prescribed interpreter training. To complete interpreter training successfully, an interpreter must demonstrate proficiency in and ability to communicate information accurately in both English and in the target language, demonstrate knowledge in both languages of any specialized terms or phraseology, and

# Fort Collins Police Services

## Policy Manual

### *Limited English Proficiency Services*

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understand and adhere to the interpreter role without deviating into other roles, such as counselor or legal adviser.

Members on the authorized interpreter list must receive refresher training annually or they will be removed from the authorized interpreter list. This annual training should include language skills competency (including specialized terminology) and ethical considerations.

The Training Sergeant shall be responsible for coordinating the annual refresher training and will maintain a record of all training the interpreters have received.

## Racial- or Bias-Based Profiling

### 402.1 PURPOSE AND SCOPE

This policy provides guidance to department members and establishes appropriate controls to ensure that employees of Fort Collins Police Services do not engage in racial- or bias-based profiling or violate any related laws while serving the community.

### 402.2 POLICY

Fort Collins Police Services is committed to providing law enforcement services to the community with due regard for the racial, cultural or other differences of those served. It is the policy of this department to provide law enforcement services and to enforce the law equally, fairly and without discrimination toward any individual or group.

Race, ethnicity or nationality, religion, sex, sexual orientation, economic status, age, cultural group, disability or affiliation with any other similar identifiable group shall not be used as the basis for providing differing levels of law enforcement service or the enforcement of the law (CRS § 24-31-309).

### 402.3 RACIAL- OR BIAS-BASED PROFILING PROHIBITED

Racial- or bias-based profiling is strictly prohibited. However, nothing in this policy is intended to prohibit an officer from considering factors such as race or ethnicity in combination with other legitimate factors to establish reasonable suspicion or probable cause (e.g., suspect description is limited to a specific race or group).

### 402.4 MEMBER RESPONSIBILITY

Every member of this department shall perform his/her duties in a fair and objective manner and is responsible for promptly reporting any known instances of racial- or bias-based profiling to a supervisor.

Officers shall provide, without being asked, a business card to any person who was detained in a traffic stop and was not cited or arrested. The business card shall include identifying information including, but not limited to, the officer's name, division, and badge or other identification number and a telephone number that may be used, if necessary, to report any comments, either positive or negative, regarding the traffic stop (CRS § 24-31-309(4)(a)).

#### 402.4.1 REASON FOR DETENTION

Officers detaining a person shall be prepared to articulate sufficient reasonable suspicion to justify a detention, independent of the individual's membership in a protected class.

To the extent that written documentation would otherwise be completed (e.g., arrest report, Field Interview (FI) card), the involved officer should include those facts giving rise to the officer's reasonable suspicion or probable cause for the detention, as applicable.

# Fort Collins Police Services

## Policy Manual

### *Racial- or Bias-Based Profiling*

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Nothing in this policy shall require any officer to document a contact that would not otherwise require reporting.

#### **402.5 SUPERVISOR RESPONSIBILITY**

The Agency will maintain educational pamphlets for public distribution at the front desk regarding the complaint process. This policy shall be made available to the public for inspection during business hours (CRS § 24-31-309(6)).

Fort Collins Police Services will investigate all complaints of alleged racial- or bias-based profiling against its members as any other complaint is investigated. The identity of the reporting person and the report shall initially be kept confidential to the extent permitted by law, unless further processing is required (CRS § 24-31-309(4)(a)).

Supervisors may monitor those individuals under their command for any behavior that may conflict with the purpose of this policy and shall handle any alleged or observed violation of this policy in accordance with Policy 340 - Expectations of Conduct.

- (a) Supervisors should discuss any issues with the involved officer and his/her supervisor in a timely manner.
- (b) Supervisors may review MDC data and any other available resource used to document contact between officers and the public to ensure compliance with this policy.
  - 1. Supervisors will document these reviews when they occur.
  - 2. Recordings that capture a potential instance of racial- or bias-based profiling should be appropriately retained for administrative investigation purposes.
- (c) Supervisors shall initiate investigations of any actual or alleged violations of this policy.
- (d) Supervisors should ensure that no retaliatory action is taken against any member of this department who discloses information concerning racial- or bias-based profiling.

#### **402.6 PUBLIC REPORTING**

The Agency shall compile, on at least an annual basis, any information derived from complaints received due to the distribution of business cards, as provided in this policy that allege profiling. The information shall be made available to the public but shall not include the names of officers or the names of persons alleging profiling (CRS § 24 31 309(4)(c)).

#### **402.7 ADMINISTRATION**

Each year, the Patrol Administrative Lieutenant shall review the efforts of the Agency to prevent racial- or bias-based profiling and submit an overview, including public concerns and complaints, to the Chief of Police. This report should not contain any identifying information regarding any specific complaint, citizen or officers. It should be reviewed by the Chief of Police to identify any changes in training or operations that should be made to improve service.



# Fort Collins Police Services

## Policy Manual

### *Racial- or Bias-Based Profiling*

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Supervisors shall review the information compiled from complaints, as provided in this policy and the annual report, and discuss the results with those they are assigned to supervise.

#### **402.8 TRAINING**

Training on racial- or bias-based profiling and review of this policy should be conducted as directed by the Training Unit.

All certified members will attend regular training on the subject of racial- or bias-based profiling (CRS § 24-31-309). All newly employed officers shall receive a copy of this policy and initial training on the subject of racial- or bias-based profiling.



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## Diplomatic and Consular Contacts

### 422.1 PURPOSE AND SCOPE

The Vienna Convention on Consular Relations sets forth certain rights of foreign nationals from member countries when they are arrested, detained or imprisoned by law enforcement officials in this country. This Policy provides direction to officers when considering a physical arrest or detention of a foreign national. All foreign service personnel shall be treated with respect and courtesy, regardless of the level of established immunity. As noted herein, the United States is a party to several bilateral agreements that obligate authorities to notify the consulate upon the person's detention, regardless of whether the detained person requests that his/her consulate be notified. The list of specific countries that the United States is obligated to notify can be found on the U.S. Department of State (DOS) website, <http://www.travel.state.gov>.

### 422.2 ARREST OR DETENTION OF FOREIGN NATIONALS

Officers should take appropriate enforcement action for all violations observed, regardless of claims of diplomatic or consular immunity by violators. A person shall not, however, be subjected to in-custody arrest when diplomatic or consular immunity is claimed by the individual or suspected by the officer, and the officer has verified or reasonably suspects that the claim of immunity is valid.

### 422.3 LEVELS OF IMMUNITY

The specific degree of immunity afforded to foreign service personnel within the U.S. is directly related to their function and position in this country.

#### 422.3.1 DIPLOMATIC AGENTS

Diplomatic agents (e.g., ambassadors and United Nations representatives) are afforded the highest levels of immunity. They are exempt from arrest or detention and are immune from all criminal (and most civil) prosecution by the host state. The family members of diplomatic agents enjoy these same immunities.

#### 422.3.2 CONSULAR OFFICERS

Consular officers are the ranking members of consular posts, who perform various formal functions on behalf of their own governments. Typical titles include consul general, consul and vice consul. These officials are immune from arrest or detention, except pursuant to a felony warrant. They are only immune from criminal and civil prosecution arising from official acts. Official acts immunity must be raised as an affirmative defense in the court of jurisdiction, and its validity determined by the court. Under this defense, the prohibited act itself must have been performed as an official function. It is not sufficient that the consular agent was on-duty or in an official capacity at the time of the violation. The family members of consular officers generally enjoy no immunity. However, any family member who has a higher level of immunity is issued an identification card by DOS enumerating any privileges or immunities on the back of the card. Examples are consular officers and family members from Russia or China.

# Fort Collins Police Services

## Policy Manual

### Diplomatic and Consular Contacts

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#### **422.3.3 HONORARY CONSULS**

Honorary consuls are part-time employees of the country they represent and are either permanent residents of the U.S. or U.S. nationals (unlike career consular officers, who are foreign nationals on temporary assignment to the U.S.). Honorary consuls may be arrested and detained. Limited immunity for official acts may be available as a subsequent defense. Family members have no immunity.

#### **422.4 IDENTIFICATION**

All diplomatic and consular personnel who are entitled to immunity are registered and issued distinctive identification cards by the DOS Protocol Office. These cards are the best means of identifying Foreign Service personnel. They include a photograph, identifying information, and on the reverse side, a brief description of the bearer's immunity status. These identification cards are not always promptly issued by DOS. In addition to the DOS identification card, Foreign Service personnel should have a driver's license issued by the DOS Diplomatic Motor Vehicle Office (DMVO), which in most circumstances replaces the operator's license issued by the state (22 USC § 4301).

#### **422.4.1 VEHICLE REGISTRATION**

Vehicles that are owned by foreign missions or Foreign Service personnel and their dependents are registered with DOS OFM, and display distinctive red, white and blue license plates. Vehicles assigned to diplomatic or consular officers will generally have license plates labels with the words "diplomat" or "consul." Vehicles owned by honorary consuls are not issued OFM license plates but may have Colorado license plates with an "honorary consul" label. A driver's identity or immunity status should not be presumed from the type of license plates displayed on the vehicle. The status of an OFM license plate should be run via the National Law Enforcement Telecommunications System (NLETS), designating "U.S." as the state, if the officer has reason to question the legitimate possession of the license plate.

#### **422.5 ENFORCEMENT PROCEDURES**

The following procedures provide a guideline for handling enforcement of foreign nationals.

#### **422.5.1 CITABLE OFFENSES**

An enforcement document shall be issued at the scene for all violations warranting such action, regardless of the violator's immunity status. The issuance of a citation is not considered an arrest or detention under current DOS guidelines. Whenever the equivalent of a notice to appear is issued to an immunity claimant, the following additional procedures shall be followed by the issuing officer:

- (a) Identification documents are to be requested of the claimant.
- (b) The title and country represented by the claimant are to be recorded on the back of the officer's copy of the notice to appear for later reference. Do not include this information on the face of the notice to appear.
- (c) Verified diplomatic agents and consular officers, including the staff and family members from countries with which the U.S. has special agreements, are not required to sign the notice

# Fort Collins Police Services

## Policy Manual

### *Diplomatic and Consular Contacts*

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to appear. The word "Refused" shall be entered in the signature box and the violator shall be released.

- (d) Claimants other than verified diplomatic agents and consular officers shall be requested to sign the notice to appear. If the claimant refuses, the identity and immunity status of the individual shall be conclusively established.
- (e) Verified consular staff members, excluding those from countries with which the U.S. has special agreements, are generally obligated to sign the notice to appear. But a signature shall not be required if the immunity status is uncertain.
- (f) All other claimants are subject to the provisions of Policy and procedures outlined here.
- (g) The violator shall be provided with the appropriate copy of the notice to appear.

#### **422.5.2 IN-CUSTODY ARRESTS**

Diplomatic agents and consular officers are immune from arrest or detention unless they have no identification and the detention is to verify their diplomatic status. Proper identification of immunity claimants is imperative in potential in-custody situations. Claimants who are not entitled to immunity shall be placed in custody in accordance with the provisions outlined in this Policy.

A subject who is placed under arrest and claims diplomatic or consular immunity shall not be physically restrained before verification of the claim, unless restraint is necessary for the protection of the officer or others. A supervisor shall be promptly notified and should respond to the scene when reasonably possible. Field verification of the claimant's identity is to be attempted as follows:

- (a) An identification card issued by the DOS Protocol Office is the only valid evidence of diplomatic or consular immunity. The following types of identification cards are issued: Diplomatic (blue bordered), Consular (red bordered) and Official (green bordered). The DOS identification cards are 3-3/4 inch by 1-1/2 inch and contain a photograph of the bearer.
- (b) Newly arrived members of diplomatic or consular missions may not yet have official DOS identity documents. Verify immunity by telephone with the DOS any time an individual claims immunity and cannot present satisfactory identification, if the officer has reason to doubt the claim of immunity, or there is a possibility of physical arrest. Agency personnel should use the following numbers in order of preference:

Office of Foreign Missions, Chicago, IL

(312) 353-5762 (0800-1645 CST)

or

Office of Foreign Missions, Diplomatic Motor Vehicle Office

Washington D.C.

(202) 895-3521 (Driver's License Verification) or (202) 895-3532 (Registration Verification)

(202) 895-3533 FAX (0815-1700 EST)

# Fort Collins Police Services

## Policy Manual

### Diplomatic and Consular Contacts

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or

Department of State, Diplomatic Security Service

Command Center, Washington D.C.

(202) 647-7277

(202) 647-1512 (Available 24 hours)

(202) 647-0122 FAX

Members of diplomatic or consular missions also may have other forms of identification. These include identification cards issued by the Colorado Consular Corps, local law enforcement agencies, the foreign embassy or consulate, a driver's license issued by DOS, and DOS license indicia on the vehicle. All these items are only an indication that the bearer may have some form of immunity.

Subjects verified through the above procedures as being officials entitled to immunity (diplomatic agent, consular officers and consular staff and family members from countries with which the U.S. has special agreements) may not be arrested. The procedures below shall be followed. These procedures should also be used in the event immunity cannot be verified but another form of identification indicates that immunity is probable.

If the release of the violator will not create an additional hazard, adequate information to properly identify the violator shall be obtained before the official is released. A supervisor's approval for the release shall be obtained whenever reasonably possible. The necessary release documents and/or a Certificate of Release Form should only be issued under the proper conditions.

If the violator appears to have been driving while under the influence, field sobriety tests, including Preliminary Alcohol Screening (PAS) device tests and chemical tests should be offered and obtained whenever reasonably possible. However, these tests cannot be compelled. The subject shall not be permitted to drive. A supervisor's approval for release shall be obtained whenever reasonably possible and alternative transportation should be arranged.

All facts of the incident shall be documented in accordance with this policy in a Driving Under the Influence (DUI) Arrest - Investigation Report, and/or any other relevant report form. Notwithstanding the field release of the subject, prosecution is still appropriate and should be pursued if the violator is either stopped or issued a notice to appear for a violation while operating a motor vehicle. The officer shall either complete a notice to appear or a written report documenting the incident.

This Agency shall then contact DOS as soon as practicable to verify the violator's status and immunity. Within five working days of the stop, this Agency shall send to the Bureau of Diplomatic Security, OFM of the DOS, a copy of the notice to appear and any collision or other written report documenting the incident. The DOS will take appropriate sanctions against errant Foreign Service personnel, even where prosecution is not undertaken by the Agency.

# Fort Collins Police Services

## Policy Manual

### *Diplomatic and Consular Contacts*

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#### **422.6 TRAFFIC COLLISIONS**

Persons involved in traffic collisions who possess a DOS OFM Diplomatic Driver License, issued by the DMVO, shall have "D" coded in the license "class" box of the Traffic Accident Report. The actual driver's license class (e.g., 1, 2, 3, or A, B, C, M) shall be entered in the miscellaneous box on page two of the traffic report. If subsequent prosecution of the claimant is anticipated, the claimant's title, country and type of identification presented should be recorded for future reference. Issuance of a citation to, or arrest of, an immunity claimant at the accident scene should be handled in accordance with the procedures specified in this policy.

##### **422.6.1 VEHICLES**

Vehicles which are owned by subjects with full immunity may not be searched, stored or impounded without the owner's permission. Such permission may be assumed if the vehicle has been stolen. These vehicles may, however, be towed the necessary distance to remove them from obstructing traffic or creating any other hazard.

##### **422.6.2 REPORTS**

A photocopy of each Traffic Accident Report involving an identified diplomat and/or immunity claimant shall be forwarded to the office of the Chief of Police within 48 hours, regardless of whether the claim is verified. The words "Immunity Claim" shall be marked on the photocopy, together with a notation of the claimant's title, country and type of identification presented, if applicable. In addition to the report, a follow-up cover memorandum should be submitted if the violation was flagrant, if the claimant was uncooperative, or if there were any other unusual aspects of the enforcement contact that should be reported to DOS for further action. The supervisor or Watch Commander apprised of the incident/collision shall also send a copy of all documents and reports submitted by the investigating officer, along with any supervisor's notes, materials and/or logs, to the Chief of Police's office within 48 hours of the incident. The Chief of Police's office will check to ensure the notification of DOS and all necessary follow-up occurs.

#### **422.7 FOREIGN NATIONALS WHO DO NOT CLAIM IMMUNITY**

These Policies and procedures apply to foreign nationals who do not claim diplomatic or consular immunity.

Officers shall arrest foreign nationals only under the following circumstances:

- (a) There is a valid warrant issued for the person's arrest.
- (b) There is probable cause to believe that the foreign national has violated a federal criminal law, a state law or a local ordinance.
- (c) Officers shall not arrest foreign nationals solely for alleged undocumented entry into the U.S. unless the undocumented entry is committed in the officer's presence.

After a lawful detention or criminal arrest, officers may detain foreign nationals solely for alleged undocumented presence in the U.S. if the U.S. Immigration and Customs Enforcement (ICE) is contacted and can respond to take custody within a reasonable time. Officers shall not arrest foreign nationals for undocumented presence. Federal courts have consistently held that

# Fort Collins Police Services

## Policy Manual

### *Diplomatic and Consular Contacts*

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undocumented presence is not a crime but a federal civil violation only enforceable by federal officers.

- Officers shall not stop or detain persons solely for determining immigration status.
- International treaty obligations provide for notification of foreign governments when foreign nationals are arrested or otherwise detained in the U.S.
- Whenever an officer arrests and incarcerates a foreign national or detains a foreign national for investigation for over two hours, the officer shall promptly advise the individual that he/she is entitled to have his/her government notified of the arrest or detention. If the individual wants his/her government notified, the officer shall begin the notification process.

#### **422.7.1 ARREST PROCEDURE**

Whenever an officer physically arrests or detains an individual for criminal investigation and the officer reasonably believes the person to be a foreign national, the officer shall inquire to determine the person's citizenship.

If the individual indicates that he/she is other than a U.S. citizen, the officer shall advise the individual that he/she has a right to have the nearest appropriate embassy or consulate notified of the arrest/detention (Vienna Convention on Consular Relations, Art. 36, (1969)).

If the individual requests such notification, the officer shall contact Fort Collins 911 as soon as practicable and request the appropriate embassy/consulate be notified. Officers shall provide Fort Collins 911 with the following information concerning the individual:

- Country of citizenship
- Full name of the individual, including paternal and maternal surname, if used
- Date of birth or age
- Current residence
- Time, date, place, location of incarceration/detention and the 24-hour telephone number of the place of detention, if the place of detention is different from the Agency itself

If the individual claims citizenship of one of the countries for which notification of the consulate/embassy is mandatory, officers shall provide Fort Collins 911 with the information above as soon as practicable, regardless of whether the individual desires that the embassy/consulate be notified. This procedure is critical because of treaty obligations with the particular countries. The list of countries and jurisdictions that require notification can be found on the DOS website, <http://www.travel.state.gov>.

#### **422.7.2 DOCUMENTATION**

Officers shall document on the face page and in the narrative of the appropriate arrest or investigation report the date and time Fort Collins 911 was notified of the foreign national's arrest/detention and his/her claimed nationality.



## Immigration Violations

### 428.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines to employees of Fort Collins Police Services in reporting, investigating and enforcing immigration laws. It is incumbent upon all employees of this Agency to make a personal commitment to equal enforcement of the law and equal service to the public. Confidence in this commitment will increase the effectiveness of the Agency in protecting and serving the entire community and recognizing the dignity of all persons, regardless of their immigration status.

### 428.2 FORT COLLINS POLICE SERVICES IMMIGRATION VIOLATION POLICY

The U.S. Immigration and Customs Enforcement (ICE) has primary jurisdiction for enforcement of the provisions of Title 8, United States Code (USC) dealing with illegal entry. When assisting ICE at its specific request, or when suspected criminal violations are discovered as a result of inquiry or investigation based on probable cause originating from activities other than the isolated violations of Title 8, USC §§ 1304, 1324, 1325 and 1326, this Agency may assist in the enforcement of federal immigration laws.

### 428.3 PROCEDURES FOR IMMIGRATION COMPLAINTS

Persons wishing to report immigration violations should be referred to the local office of ICE. The Employer Sanction Unit of ICE has primary jurisdiction for enforcement of Title 8, USC.

#### 428.3.1 BASIS FOR CONTACT

Officers must make legitimate contact with and have reasonable suspicion that an individual is an undocumented alien prior to investigating immigration status. The fact that an individual is suspected of being an undocumented alien should generally not be the sole basis for contact, detention or arrest.

#### 428.3.2 IDENTIFICATION

Whenever an individual is reasonably suspected of a criminal violation (e.g., infraction, misdemeanor or felony), the investigating officer should take reasonable steps to determine the individual's identity through valid identification or other reliable sources. If an individual would have otherwise been released for an infraction or misdemeanor on a citation, the person should be taken to the station and given a reasonable opportunity to verify his/her true identity (e.g., telephone calls). If the person's identity is thereafter reasonably established, the original citation release should be completed without consideration of immigration status.

#### 428.3.3 ARRESTS

If the officer intends to take enforcement action and the individual is unable to reasonably establish his/her true identity, the officer may take the person into custody on the suspected criminal violation if there is a substantial likelihood that the individual will not show up at a later date. A field supervisor shall approve all such arrests.

# Fort Collins Police Services

## Policy Manual

### Immigration Violations

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#### **428.3.4 BOOKING**

If there is a substantial likelihood that a person will not show up at a later date because he/she cannot reasonably establish his/her true identity, the individual may, upon approval of a supervisor, be booked into jail for the suspected criminal violation and held for bail.

#### **428.3.5 DETENTION**

A person detained exclusively for a traffic violation or misdemeanor should not be detained longer than necessary for the purpose of establishing his/her true identity.

#### **428.4 CONSIDERATIONS PRIOR TO REPORTING TO ICE**

Fort Collins Police Services is concerned for the safety of local citizens and thus detection of criminal behavior is of primary interest in dealing with any persons. The decision to arrest shall be based upon those factors which establish probable cause and not on arbitrary aspects. Race, ethnicity, age, gender, sexual orientation, religion and socioeconomic status alone are of no bearing on the decision to arrest.

All individuals, regardless of their immigration status, must feel secure that contacting law enforcement will not make them vulnerable to deportation. Members of this Agency should not attempt to determine the immigration status of crime victims and witnesses or take enforcement action against them absent exigent circumstances or reasonable cause to believe that a crime victim or witness is involved in violating criminal laws. Generally, if an officer suspects that a victim or witness is an undocumented immigrant, the officer need not report the person to ICE unless circumstances indicate such reporting is reasonably necessary.

Nothing in this policy is intended to restrict officers from exchanging legitimate law enforcement information or otherwise abrogate the duty to cooperate with federal, state or local government entities (8 USC § 1373; 8 USC § 1644).

#### **428.4.1 U-VISA/T-VISA NON-IMMIGRANT STATUS**

Under certain circumstances, federal law allows temporary immigration benefits to victims and witnesses of certain qualifying crimes (8 USC § 1101(a)(15)(U and T)). A declaration/certification for a U-Visa/T-Visa from the U.S. Citizenship and Immigration Services may be completed on the appropriate U.S. Department of Homeland Security (DHS) Form supplements (I-918 or I-914) by law enforcement and must include information on how the individual can assist in a criminal investigation or prosecution in order for a U-Visa/T-Visa to be issued.

Any request for assistance in applying for U-Visa/T-Visa status should be forwarded in a timely manner to the Criminal Investigations Division supervisor assigned to supervise the handling of any related case. The Criminal Investigations Division supervisor should do the following:

- (a) Consult with the assigned detective to determine the current status of any related case and whether further documentation is warranted.
- (b) Review the instructions for completing the declaration/certification if necessary. Instructions for completing Form I-918/I-914 may be found on the U.S. DHS website.

# Fort Collins Police Services

## Policy Manual

### *Immigration Violations*

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- (c) Contact the appropriate prosecutor assigned to the case, if applicable, to ensure the declaration/certification has not already been completed and whether a declaration/certification is warranted.
- (d) Address the request and complete the declaration/certification, if appropriate, in a timely manner.
- (e) Ensure that any decision to complete or not complete the form is documented in the case file and forwarded to the appropriate prosecutor. Include a copy of any completed certification in the case file.



## **Detentions, Contacts and Photographing Detainees**

### **440.1 PURPOSE AND SCOPE**

The purpose of this Policy is to establish guidelines for conducting field interviews (FI), pat-down searches, and the taking and retention of photographs of persons detained in the field but not arrested. Due to a variety of situations confronting the officer, the decision to FI or photograph a field detainee shall be left to the discretion of the involved officer based on the totality of the circumstances available at the time of the detention.

### **440.2 FIELD INTERVIEWS**

Officers may stop individuals for the purpose of conducting an FI where reasonable suspicion is present. In justifying the stop, the officer should be able to point to specific facts which, when taken together with rational inferences, reasonably warrant the stop. Such facts include, but are not limited to:

- (a) The appearance or demeanor of an individual that suggests he/she is part of a criminal enterprise or is engaged in a criminal act.
- (b) The actions of the suspect that suggest he/she is engaged in a criminal activity.
- (c) Whether the hour of day or night is inappropriate for the suspect's presence in the area.
- (d) The suspect's presence in the particular area is suspicious.
- (e) The suspect is carrying a suspicious object.
- (f) The suspect's clothing bulges in a manner that suggests he/she is carrying a weapon.
- (g) The suspect is located in proximate time and place to an alleged crime.
- (h) The officer has knowledge of the suspect's prior criminal record or involvement in criminal activity.

#### **440.2.1 INITIATING A FIELD INTERVIEW**

Based on observance of suspicious circumstances or upon information from investigation, an officer may initiate the stop of a person when there is articulable, reasonable suspicion to do so. A person, however, should not be detained longer than is reasonably necessary to resolve the officer's suspicions.

Nothing in this Policy is intended to discourage consensual contacts. Fort Collins Police Services encourages its officers to make frequent and random casual contacts with consenting individuals to strengthen community involvement, community awareness, and problem identification.

#### **440.2.2 WITNESS IDENTIFICATION AND INTERVIEWS**

Because potential witnesses to an incident may be lost or the integrity of their statements compromised with the passage of time, officers should, when warranted by the seriousness of the

# Fort Collins Police Services

## Policy Manual

### *Detentions, Contacts and Photographing Detainees*

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case, take reasonable steps to promptly coordinate with an on-scene supervisor and/or criminal investigator to utilize available personnel for the following:

- (a) Identifying all persons present at the scene and in the immediate area.
  - 1. When feasible, a recorded statement should be obtained from those persons who claim not to have witnessed the incident but who were present at the time it occurred.
  - 2. Any potential witness who is unwilling or unable to remain available for a formal interview should not be detained absent reasonable suspicion to detain or probable cause to arrest. Without detaining the individual for the sole purpose of identification, officers should attempt to identify the witness prior to his/her departure.
- (b) Witnesses who are willing to provide a formal interview should be asked to meet at a suitable location where criminal investigators may obtain a recorded statement. Such witnesses, if willing, may be transported by Agency personnel.
  - 1. A written, verbal or recorded statement of consent should be obtained prior to transporting a witness in an Agency vehicle. When the witness is a minor, consent should be obtained from the parent or guardian, if available, prior to transport.

#### **440.2.3 DURATION OF DETENTION**

A subject may be detained to conduct an FI only for the period reasonably necessary to determine the individual's identity and resolve the officer's suspicions. The interview should not extend beyond the immediate vicinity of the place of detention unless the detainee consents to further contact or is arrested.

#### **440.3 CONSENSUAL SEARCHES**

An officer may conduct a consensual search of a person who is not under arrest, and any effects of the person or a vehicle as follows (CRS § 16-3-310):

- (a) The person has apparent or actual authority to provide permission to search the vehicle or effects, if any.
- (b) The person is informed that he/she is being asked to voluntarily consent to a search.
- (c) The person is informed that he/she has the right to refuse the request to search.
- (d) The person voluntarily provides consent.

When asking for consent, officers should explain the scope of the search. Officers should stop a consent search if the person withdraws consent.

Officers should, whenever practicable, obtain written consent. If a written consent form is not readily available, the officer should record any verbal consent, if possible.

#### **440.4 PAT-DOWN SEARCHES**

A pat-down search of a detained subject may be conducted whenever an officer reasonably believes the person may possess an object that can be utilized as an offensive weapon or

# Fort Collins Police Services

## Policy Manual

### *Detentions, Contacts and Photographing Detainees*

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whenever the officer has a reasonable fear for his/her own safety or the safety of others. Circumstances that may establish justification for performing a pat-down search include, but are not limited to, the following (see also CRS § 16-3-103(2)):

- (a) The type of crime suspected, particularly in crimes of violence where the use or threat of weapons is involved.
- (b) Where more than one suspect must be handled by a single officer.
- (c) The hour of the day and the location or area where the stop takes place.
- (d) Prior knowledge of the suspect's use of force and/or propensity to carry weapons.
- (e) The appearance and demeanor of the suspect.
- (f) Visual indications that suggest the suspect is carrying a firearm or other weapon.
- (g) The age and gender of the suspect.

#### **440.5 DISPOSITION OF PHOTOGRAPHS TAKEN IN THE FIELD**

All detainee photographs must be adequately labeled and associated with either an associated FI card or a report number. If an individual is photographed as a suspect in a particular crime, the photograph should be submitted as an evidence item in the related case, following standard evidence procedures.

If a photograph is not associated with an investigation where a case number has been issued, the officer who collected the photograph should forward the photograph to one of the following locations:

- (a) If the photograph and associated FI or memorandum is relevant to criminal gang enforcement, the officer will forward the photo and documents to the Criminal Impact Unit supervisor. That supervisor will ensure the photograph and supporting documents are retained as prescribed in the Policy 442 - Criminal Street Gangs.
- (b) Photographs that do not qualify for retention in Policy 442 - Criminal Street Gangs or that are not evidence in an investigation will be destroyed.
- (c) When a photograph is taken in association with a particular case, the investigator may use such photograph in a photo lineup. Thereafter, the individual photograph should be retained as a part of the case file in the Records Division. All other photographs will be kept in compliance with the Agency's records retention schedule,
- (d) When a photograph of a child is taken in association with a particular case, before filing a complaint regarding the offense, the photograph may only be used in the investigation of the original offense and may only be released to the court.

#### **440.6 PHOTO REVIEW POLICY**

Any person who has been the subject of a field photograph or an FI by this Agency during any contact other than an arrest may file a written request within 30 days of the contact, requesting a

# Fort Collins Police Services

## Policy Manual

### *Detentions, Contacts and Photographing Detainees*

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review of the status of the photograph or FI. The request shall be directed to the Chief of Police, who will ensure that the status of the photograph or FI is properly reviewed according to this Policy as described below. Upon a verbal request, the Agency shall send a request form to the requesting party along with a copy of this Policy.

#### **440.6.1 REVIEW PROCESS**

Upon receipt of such a written request, the Chief of Police or an authorized designee will permit a person of whom the Agency retains a photograph or record of a field interview (FI) appear in person and review that photograph or FI. Any minor must be accompanied by a parent or legal guardian for a review of the status of the photograph or FI.

Such a meeting will generally be scheduled during regular business hours within 30 days of the receipt of the written request. An extension of the 30-day limit may be made either upon the mutual convenience of the parties or if, at the discretion of the Chief of Police, there appears to be an ongoing legitimate law enforcement interest which warrants a delay. If the delay could jeopardize an ongoing investigation, nothing in this policy shall require the Chief of Police to disclose the reason for the delay.

A meeting for the review of the status of any non-arrest photograph/FI is not intended to be a formal hearing.

After carefully considering the information available, the Chief of Police or an authorized designee will determine, generally within 30 days of the original meeting, whether the photograph/FI was obtained in accordance with existing law and Fort Collins Police Services Policy and whether there is any ongoing legitimate law enforcement interest in retaining the photograph or FI.

If the Chief of Police or an authorized designee determines that the photograph/FI was obtained in accordance with existing law and Agency Policy and there is an ongoing legitimate law enforcement interest in retaining the non-arrest photograph, the photograph or FI shall be retained according to this Policy and applicable law.

If the Chief of Police or an authorized designee determines that the original legitimate law enforcement interest in retaining a non-arrest photograph or FI card no longer exists or that it was obtained in violation of existing law or Fort Collins Police Service Policy, the original photograph or FI card shall be purged and disposed in compliance with the organization's records retention schedule. All other associated reports or documents, however, will be retained according to Agency Policy and applicable law.

If the Chief of Police or the authorized designee determines that any involved Fort Collins Police Services personnel violated existing law or Agency Policy, the Chief of Police or an authorized designee shall initiate a separate administrative investigation that may result in additional training, discipline or other appropriate action for the involved employee.

The person photographed or who was the subject of an FI will be informed in writing within 30 days of the Chief of Police's determination whether the photograph or FI will be retained. This does



# Fort Collins Police Services

## Policy Manual

### *Detentions, Contacts and Photographing Detainees*

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not entitle any person to any discovery or access to any law enforcement records not otherwise authorized by law.



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## **Investigation and Prosecution**

### **600.1 PURPOSE AND SCOPE**

When assigned to a case for initial or follow-up investigation, officers shall proceed with due diligence in evaluating and preparing the case for appropriate clearance or presentation to a prosecutor for filing criminal charges.

### **600.2 INITIAL INVESTIGATIONS**

An officer responsible for an initial investigation shall complete no less than the following:

- (a) Make a preliminary determination if a crime has been committed by completing, at a minimum:
  - 1. An initial statement from any witnesses or complainants.
  - 2. An examination for possible evidence.
- (b) If information indicates a crime has occurred, the officer shall:
  - 1. Preserve the scene and any evidence as required to complete the initial and follow-up investigation.
  - 2. Determine if additional investigative resources (e.g., On-call Detective or crime scene processing) are necessary and request assistance as needed.
  - 3. If assistance is warranted, or if the incident is not routine, notify a supervisor or.
  - 4. Interview victims, informants, complainants, witnesses and suspects if such interviews will not jeopardize the investigation.
  - 5. Identify, preserve and where appropriate collect any evidence.
  - 6. Take any appropriate law enforcement action.
  - 7. Complete and submit the appropriate reports and documentation.
  - 8. Communicate to the victim(s) the status of the case and who will be responsible for the follow-up investigation. When appropriate, this information should be included in the case report.
  - 9. Communicate to the victim(s) appropriate referrals including, but not limited to, Investigations, Victim Services, Department of Human Services, etc.
- (c) If the preliminary determination is that no crime occurred, determine what other action may be necessary, what other resources may be available and advise the informant or complainant of this information.

A civilian employee, who is not an officer or Community Service Officer, assigned to any preliminary investigation, is responsible for all investigative steps limited to the scope of their

# Fort Collins Police Services

## Policy Manual

### *Investigation and Prosecution*

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duties. Should an initial investigation indicate additional steps are required, to include any attempt to contact or interview a suspect, the assistance of an officer shall be requested.

#### **600.3 CUSTODIAL INTERROGATION REQUIREMENTS**

- (a) Whenever reasonably possible, a custodial interrogation of a person who is suspected of having committed any violent felony offense shall be electronically recorded (audio/video or both as available) in its entirety.
- (b) Officers should also electronically record any other custodial interrogation when possible.
- (c) Investigative interviews for any other offense, when the officer reasonably believes it would be appropriate and beneficial to the investigation and is otherwise allowed by law, should be electronically recorded.
- (d) No recording of an interrogation should be destroyed or altered without written authorization from the District Attorney and an Investigations Division supervisor. Copies of recorded interrogations or interviews may be made in the same or different format provided they are true, accurate and complete copies and are made only for authorized and legitimate law enforcement purposes.
- (e) Officers shall include summaries of custodial questioning and investigative interviews in their case reports and obtain written statements from suspects when applicable.

#### **600.4 PERSONS WITH COMMUNICATION DISABILITIES**

Upon the arrest of a person with a communication disability and before interrogation or the taking of his/her statement, the officer, should make an interpreter available to that person at public expense or in accordance with any applicable law.

#### **600.5 FOLLOW-UP INVESTIGATIONS**

Officers responding to calls for service are expected to thoroughly investigate their cases and complete follow-up investigations, where possible. SOP 315 lists specific case classifications that will be referred to the Criminal Investigations Division (CID) following the initial Patrol investigation. CID Detectives will review those cases and complete any follow-up investigative steps that are needed. Cases being referred to CID require supervisory approval and will utilize the CID Hotline email system. At minimum, the referral should include:

- (a) Referring officer's name
- (b) Case Number
- (c) Type of Crime
- (d) Information on what occurred
- (e) Information on what the officer has already completed
- (f) Information about why the case is being referred, and

# Fort Collins Police Services

## Policy Manual

### *Investigation and Prosecution*

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(g) Investigative steps that need to be completed

An Investigations' supervisor shall evaluate each case referral. Based upon caseload and case assignment the supervisor will assign the case to the appropriate detective. A notation in case management should be made to show the date of assignment. The detective assigned to the follow-up investigation should contact the victim to let them know the case has been re-assigned. If the case referral is not accepted by the Investigations' supervisor, he/she shall notify the officer and the officer's supervisor by email explaining the reasons for the decision and refer the case back to the original officer.

#### **600.6 MODIFICATION OF CHARGES FILED**

Employees should consult with a supervisor prior to recommending to the District Attorney, City Attorney or to any other official of the court that charges on a pending case be altered or the case dismissed. Engaging in discussions initiated by the prosecutor representing the District Attorney or City Attorney is not restricted. In all cases resulting in court prosecution, any intent by a member of the Agency to modify the charges filed or to recommend dismissal of charges in a pending case shall be discussed with a Deputy Chief or the Chief of Police or the authorized designee prior to taking action.

#### **600.7 TRAINING**

Officers should receive training in conducting preliminary investigations prior to assignment to any investigative duties. Officers assigned to investigative follow-up or advanced investigations, or upon assignment to the Criminal Investigations Division, should have completed training in follow-up investigations.



## Administrative Investigations

### 1020.1 PURPOSE AND SCOPE

The Agency is committed to high ethical standards. We are an integral part of the community, and the Agency exists to serve the needs of citizens. The people entrust us with considerable authority, and we must be responsive to their concerns.

The primary purpose of this Policy is to establish the procedures to be used in administrative investigations of Agency employees to ensure fair treatment of complaining parties, witnesses, and employees. Another purpose of this Policy is to establish certain guidelines for criminal investigations of Agency employees and to delineate the differences between, and the separation of administrative and criminal investigations of Agency employees. It is not the intent of this Policy to discourage legitimate complaints.

This Policy applies to all administrative and criminal investigations of alleged misconduct by Agency employees or authorized volunteers, whether such investigations are initiated internally or as the result of a citizen complaint.

#### 1020.1.1 TYPES OF INVESTIGATIONS

Personnel complaints consist of any allegation of misconduct or improper job performance against any Agency employee that, if true, would constitute a violation of Agency Policy, City Policy, federal, state or local law. Misconduct allegations or complaints may be generated internally or by the public.

Personnel complaints shall be classified in one of the following categories:

- (a) Performance complaint
- (b) Level One Investigation
- (c) Level Two Investigation

#### 1020.1.2 INVESTIGATIVE FINDINGS

At the conclusion of a Level One or Level Two investigation, one of the following findings shall be used:

- (a) "Not Involved": The employee was not involved in the incident.
- (b) "Unfounded": The allegation was false, or not factual.
- (c) "Exonerated": The incident occurred, but the employee's behavior did not violate any City or Agency rule, regulation, Policy, procedure or Training Directive.
- (d) "Not Sustained": There is insufficient evidence to prove or disprove the allegation.
- (e) "Sustained": The allegation is supported by sufficient evidence establishing that the employee violated one or more City or Agency rule, regulation, Policy, procedure or Training Directive.

# Fort Collins Police Services

## Policy Manual

### *Administrative Investigations*

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There is no official finding required in a performance complaint, only that it was resolved and by what method.

#### **1020.2 INVESTIGATIONS PROCESS**

The purpose of this section is to outline the process used to investigate the conduct of Agency employees. It is intended to provide a guideline for supervisors to follow and also give employees an expectation of the investigation process. While an attempt has been made to give examples of situations that could be classified under these levels, it is not intended to define every situation. Supervisors are expected to exercise good judgment in classifying investigations and discuss any uncertain situations with their chain of command.

- (a) The Chief has primary authority to conduct all administrative and criminal investigations of Agency employees, or cause them to be conducted. In accordance with City policy, Police Services may investigate sexual harassment complaints filed in the Agency through established administrative investigation procedures after consulting with Human Resources staff.
- (b) The Chief or City Manager may request and authorize the City's Human Resources Department to conduct an administrative investigation.
- (c) While conducting an investigation, the Professional Standards Unit (PSU) is delegated the Chief's authority for the purpose of directing an administrative investigation. The PSU has the authority to require all employees to make a full and complete disclosure pertaining to the commission of, or omission of, any act which might be in conflict with their duties and obligations as an employee of the Agency or pertaining to the duties and obligations of any other employee of the Agency.
- (d) The Chief may direct any supervisor to conduct an administrative or criminal investigation. When doing so, they have the same authority as the PSU described above.

Supervisors shall review the applicability of Policy 1021 - Early Intervention System concerning complaint initiation, investigation, and tracking.

Legal advice regarding investigative procedures or corrective action will be provided by the City Attorney's Office.

#### **1020.2.1 AVAILABILITY OF COMPLAINT FORMS**

Complaint packets will be maintained in the Agency public lobby and on the Agency's website. Forms may also be available at other government offices and facilities. Complaint packets in languages other than English may also be provided as determined necessary or practicable.

Each Agency supervisor shall be responsible for monitoring public satisfaction or inquiries regarding the personnel complaint process and shall forward to the Professional Standards Lieutenant any suggestions for improvement or changes.



# Fort Collins Police Services

## Policy Manual

### *Administrative Investigations*

---

#### 1020.2.2 SOURCE OF COMPLAINTS

Any person who believes that an Agency employee has been involved in improper conduct has the right to make a complaint. In fact, under some circumstances Agency employees may be obligated under the law and under Directives of this Agency to report improper conduct of other employees, as well as have a professional obligation to report such conduct. It is the Policy of this Agency to investigate all such complaints expeditiously, effectively, and impartially, and to take appropriate action, all in accordance with this Policy and other applicable law.

Anonymous complaints and third-party complaints should be accepted and investigated to the extent that sufficient information is provided.

#### 1020.2.3 ACCEPTANCE OF COMPLAINTS

All allegations of employee misconduct will be screened by the Professional Standards Unit or the employee's supervisor. If, during that initial screening process, it is determined that the employee's behavior was outside of accepted Agency standards the complaint, even if minor, will be entered into the Internal Affairs Case Management System (IACMS).

All complaint packets will be courteously accepted by any employee and promptly given to the appropriate supervisor. Although written complaints are preferred, a complaint may also be filed verbally either in person or by telephoning the Agency and will be accepted by any employee. If a supervisor is not immediately available to take a verbal complaint, the receiving employee shall obtain contact information sufficient for the supervisor to contact the complainant.

The following should be considered when taking a complaint:

- (a) Satisfactory resolution of performance complaints will normally involve a misunderstanding of tactics and procedures, that once explained achieves a fair and reasonable resolution of the complaint that is satisfactory to all parties involved. Though the complainant may be satisfied following such explanation, the supervisor shall enter the complaint into the IACMS if it is determined that the employee behaved in a manner not consistent with accepted Agency standards.
- (b) If a complainant is intoxicated to the point where his/her credibility appears to be unreliable, identifying information should be gathered and the person provided with information as to how a complaint packet may be obtained. However, if the intoxicated person insists on filing the complaint, the complaint shall be taken and properly processed.
- (c) Depending on the urgency and seriousness of the allegations involved, complaints from juveniles should generally be taken only with a parent or guardian present, and after the parent or guardian has been informed of the circumstances prompting the complaint.

#### 1020.2.4 COMPLAINING PARTY RIGHTS AND RESPONSIBILITIES IN AN ADMINISTRATIVE INVESTIGATION

Individuals wishing to comment or complain about the conduct of Agency employees will be treated with respect and professionalism.

# Fort Collins Police Services

## Policy Manual

### *Administrative Investigations*

---

- (a) The complainant shall have the right to have one representative of his or her choice present while being interviewed during an administrative investigation.
- (b) The representative's role shall be restricted to that of an advisor to the complainant, and not as a participant in the questioning and/or investigation.
- (c) Complainant interviews shall be scheduled at the mutual convenience of the Agency and the complainant, and not at the convenience of the complainant's representative, if any.
- (d) Interviews shall be conducted at a reasonable hour, unless the seriousness of the investigation requires immediate action.
- (e) The duration of an administrative interview of a complainant shall be for a reasonable period of time, and shall allow for reasonable personal necessities and rest periods.
- (f) The complainant has the right to a copy of his or her statement.
- (g) The complainant has the right to notification of the findings of a Level One or Level Two investigation. If the investigation has not been reviewed by the Citizen Review Board, the complainant has the right to request such review by filing a written request with the Chief of Police or the City Manager's Office within 15 calendar days of the complainant's receipt of the written findings. A written complaint, even if minor and would have fit the criteria to be investigated as a performance complaint, will be elevated to a Level One when the Agency is made aware that a written complaint has been submitted to the Citizen Review Board.

#### **1020.3 INITIAL SUPERVISOR RESPONSIBILITIES**

A supervisor who becomes aware of alleged misconduct or receives a citizen complaint shall take reasonable steps to prevent aggravation of the situation.

In general, the primary responsibility for the investigation of a performance complaint shall rest with the employee's immediate supervisor. The Chief or the authorized designee may, however, direct that another supervisor investigate it. The supervisor shall be responsible for the following:

- (a) A supervisor receiving a complaint involving allegations of a potentially serious nature shall ensure that the employee's chain of command, is notified as soon as practicable.
- (b) During the preliminary investigation of any complaint, the supervisor should make every reasonable effort to obtain names, addresses and telephone numbers of any potential witnesses.
- (c) When appropriate, immediate medical attention should be provided and photographs of alleged injuries as well as accessible areas of non-injury should be taken.
  - 1. In circumstances where the integrity of the investigation could be jeopardized by reducing the complaint to writing or where the confidentiality of a complainant is at issue, a supervisor shall orally report the matter to the employee's Deputy Chief or the Chief of Police, who will initiate appropriate action.

# Fort Collins Police Services

## Policy Manual

### *Administrative Investigations*

---

- (d) A supervisor investigating an allegation of misconduct by an employee shall ensure that the procedural rights of the employee are followed pursuant to Policy, the collective bargaining agreement if applicable, and state and federal law.
- (e) When the nature of a complaint relates to sexual, racial, ethnic, or other forms of prohibited harassment or discrimination, the supervisor receiving the complaint shall gather basic facts and then promptly notify his or her chain of command, who will in turn notify the PSU. If found to be a credible allegation, PSU will contact the Human Resources Department and the Chief of Police for direction in addressing the complaint.

#### **1020.4 ASSIGNMENT TO ADMINISTRATIVE LEAVE**

Employees may be required by the City to go on administrative leave at any time with or without cause or notice at the sole discretion of the City. Such notice shall be in writing to the affected employee. Circumstances under which such a leave may occur include, but are not limited to, the following:

- (a) To make inquiries into or investigate a work-related matter;
- (b) To remove the employee from the workplace pending a pre-deprivation hearing or decision;
- (c) To protect the employee;
- (d) To protect the public;
- (e) To protect the other employees or property in the workplace; or
- (f) To further any other work-related or business related purpose.

##### **1020.4.1 ADMINISTRATIVE LEAVE**

Unless otherwise stated in the collective bargaining agreement, an employee placed on administrative leave will be subject to the following:

- (a) The determination of paid versus unpaid leave will be made in accordance with City Personnel Policies and Procedures.
- (b) An employee placed on administrative leave may be required by a supervisor to relinquish any Agency equipment or vehicle as deemed appropriate by the Chief of Police.
- (c) An employee placed on administrative leave shall not take any action as an Agency employee or in an official capacity without the prior approval of his or her Deputy Chief. The employee shall be required to continue to comply with all Policies and lawful orders of a supervisor.
- (d) An employee placed on administrative leave may be temporarily reassigned to a different shift, generally within normal business hours, during the pendency of the investigation. The employee must remain available for contact at all times during the assigned working hours.
- (e) At such time as any employee placed on administrative leave is returned to full and regular duty, the employee shall be returned to his/her regularly duty assignment.

# Fort Collins Police Services

## Policy Manual

### *Administrative Investigations*

---

#### **1020.5 ADMINISTRATIVE VS. CRIMINAL INVESTIGATIONS**

Employees may be subject an administrative investigation and/or a criminal investigation to determine the factual basis of any complaint. It is the Policy of this Agency to distinguish between the two types of investigations to protect the rights of employees.

- (a) The purpose of an administrative investigation is to determine whether or not any City or Agency rules, regulations, Policies, procedures, or department training Directives have been violated.
  - 1. Except as otherwise specifically provided in any other Agency Policy, all administrative investigations of Agency employees shall be conducted pursuant to and in accordance with the provisions of this Policy.
- (b) A criminal investigation is conducted to determine if alleged misconduct may be the basis for filing of criminal charges. The Chief has the authority to order a criminal investigation of any alleged wrongdoing instead of or in addition to an administrative investigation.
  - 1. All criminal investigations of Agency employees by this Agency shall be conducted in accordance with Colorado law and applicable provisions of this Policy. The Chief, however, may direct that the investigation of any alleged criminal wrongdoing by an Agency employee be conducted by an outside law enforcement department.

#### **1020.5.1 GENERAL CONDUCT OF INVESTIGATIONS**

Administrative and criminal investigations shall be conducted separately and managed by different individuals. The criminal investigator shall not have access to evidence, results, and other information that came from compelled disclosures made as part of the administratively investigated employee or that were obtained from leads furnished by such disclosures. Additionally, information that is regulated by the Colorado Open Records Act, such as the contents of an employee's personnel file, shall only be released in a manner consistent with that Act.

An administrative investigation may parallel a criminal investigation and/or any prosecution.

- (a) The Chief shall be notified as soon as practicable when an employee is formally accused of criminal conduct. In the event of serious criminal allegations, the Chief of Police may request that a criminal investigation by an outside law enforcement or prosecutorial department be conducted parallel to the administrative investigation.
- (b) An employee accused of criminal conduct shall be provided with all rights and privileges afforded to a civilian under the state and federal constitutions and the employee may not be administratively ordered to provide any information to a criminal investigator.
- (c) No information or evidence administratively compelled from an employee may be given to the criminal investigator who is investigating the employee who is compelled to provide the information.
- (d) Any law enforcement department is authorized to release limited information concerning the arrest of a peace officer which has not led to a conviction. However, no disciplinary action

# Fort Collins Police Services

## Policy Manual

### *Administrative Investigations*

---

shall be taken against the accused employee based solely on an arrest or crime report. An independent administrative investigation shall be conducted in accordance with Agency Policy.

#### **1020.6 INVESTIGATIVE PROCESS**

The purpose of this section is to outline the process used to investigate the conduct of Agency employees. It is intended to provide a guideline for supervisors to follow and also give employees an expectation of the investigation process. While an attempt has been made to give examples of situations that could be classified under these levels, it is not intended to define every situation.

- (a) Supervisors are expected to exercise good judgment in classifying investigations and discuss any uncertain situations with their chain of command.
- (b) A difference of opinion between an employee and a citizen concerning the employee's decision to issue a traffic citation will not ordinarily be subject to an administrative investigation.
- (c) A difference of opinion between an employee and a citizen concerning the citizen's guilt or innocence for a crime will be decided within the confines of the criminal justice system, and will not ordinarily be subject to an administrative investigation.
- (d) When considering this Policy, supervisors shall consider the applicability of the Early Intervention System Policy concerning complaint initiation, investigation, and tracking.
- (e) Legal advice regarding investigative procedures or corrective action will be provided by the City Attorney's Office.

#### **1020.6.1 ADMINISTRATIVE SEARCHES**

Any employee may be compelled to disclose personal financial information pursuant to proper legal process if such information tends to indicate a conflict of interest with official duties, if the employee is assigned to or being considered for a special assignment, or to determine if the employee is engaged in unlawful activity.

Employees shall have no expectation of privacy when using telephones, computers, radios or other communications provided by the Agency.

Assigned lockers and storage spaces should only be administratively searched in the employee's presence, with the employee's consent, with a valid search warrant or where the employee has been given reasonable notice that the search will take place.

All other Agency areas (e.g., desks, office space and assigned vehicles) may be administratively searched by a supervisor, in the presence of an uninvolved witness, for non-investigative purposes (e.g., obtaining a needed report or radio). An investigative search of such areas shall only be conducted upon a reasonable suspicion that official misconduct is involved.

# Fort Collins Police Services

## Policy Manual

### *Administrative Investigations*

---

#### 1020.6.2 ADMINISTRATIVE INVESTIGATION FORMAT

Complaints about employee performance or conduct shall be investigated uniformly per the guidelines in the Policy and also in the Early Intervention System (EIS) Policy.

##### (a) Performance complaints

1. General: It is expected that an employee's supervisor will investigate any performance issue that comes to the attention of the Agency by any source. This may involve a citizen's perception about an employee's behavior; a minor violation of Agency Policy, procedure or practice; or a concern expressed about the way an incident was handled. Subsequent performance issues involving similar conduct by the same employee within a twelve-month period may result in the elevation of the investigation to Level One. All performance complaints that are not satisfactorily resolved are to be entered into the Internal Affairs Case Management System.
  - (a) Performance issues typically require minimal investigation and usually consist of speaking with the concerned party and the employee(s) involved. The supervisor has broad latitude in resolving the issue. This type of investigation is not appropriate for allegations that require the review of the Citizen Review Board pursuant to Section 2-139 (2)(a) and (b) of the City Code.
2. Investigator: Performance complaints are generally investigated by supervisors or acting supervisors.
3. Documentation: Performance complaints are generally noted in a supervisor's file. If a complaining party is not satisfied with the outcome of a performance complaint, the supervisor will prepare an EIS Incident Entry documenting the complaint.
4. Disciplinary and/or corrective action: Action taken would generally be, but is not limited to, oral counseling, mandated training, modification of job duties, written apology, and consideration in the employee's next performance evaluation.
5. Findings: There is no official finding required in a performance complaint investigation, only that it was resolved and by what method. However, if the complaint was received in writing, a finding is required.
6. Review Process: Discipline of oral counseling or oral reprimand (with an accompanying Disciplinary Action Form) may be imposed by the employee's supervisor without further review prior to imposition. Prior to imposing a written reprimand, suspension, involuntary demotion, or termination of employment, the supervisor shall forward the investigation and disciplinary recommendations through the involved employee's chain of command for review and comment. Each supervisor in the chain of command shall review the investigation and prepare written recommendations as to the administrative discipline and/or corrective action necessary. It shall then be forwarded to the Chief for his or her review and

# Fort Collins Police Services

## Policy Manual

### Administrative Investigations

---

consideration. The Chief shall review the completed file of the administrative investigation, the chain-of-command supervisors' recommended discipline and/or corrective action, and take one of the following actions:

- (a) Send the case back for additional investigation; or
- (b) Authorize and/or impose any appropriate administrative discipline and corrective action. Prior to the Chief making his or her disciplinary decisions where the chain of command has recommended the imposition of a suspension, involuntary demotion, or termination of a classified employee who has completed the introductory period, a pre-decision hearing will be scheduled and conducted as described in the City of Fort Collins Personnel Policies and Procedures. As soon as practical after the Chief renders his or her decision and determines whether any discipline and/or corrective action should be imposed, the affected employee and the employee's chain of command shall be notified in writing.

#### (b) Level One Investigation

1. General: A Level One investigation involves an allegation that an employee violated clearly established Agency Policies, Directives, procedure or practice and may be brought to the attention of the Agency by any source. A Level One investigation involves an allegation that if substantiated could result in disciplinary action beyond that usually expected in a performance complaint. A Level One investigation is not appropriate for allegations that require the review of the Citizen Review Board pursuant to Section 2-139 (2)(a) and (b) of the City Code. However, the Chief can forward any investigation to CRB at his or her discretion.

- (a) Some examples of investigations that should be considered Level One include, but are not limited to, allegations that:
  - i. The police tactics used were inappropriate or unwarranted, but do not rise to the level of a Use of Force allegation that would be classified as a Level Two investigation.
  - ii. An employee's behavior presented a significant safety risk to another person or a significant threat of property damage.
  - iii. An employee's driving presented a significant safety risk to another person or a significant threat of property damage, whether or not it resulted in a motor vehicle accident.
  - iv. An employee was involved in dishonest, untruthful or fraudulent conduct.
  - v. An employee engaged in conduct that tends to seriously impair the operation or morale of the Agency, may cause the public to lose

# Fort Collins Police Services

## Policy Manual

### *Administrative Investigations*

---

confidence in the police department, violates the public trust, or affects the reputation of the Agency or any employee.

- vi. An employee's treatment of others was biased, unequal, or discriminatory in nature, but not rising to the level of a civil rights violation that would be classified as a Level Two investigation.
  - vii. An employee participated in sexual harassment of another employee or citizen. Subsequent Level One investigations involving similar conduct by the same employee within a twelve-month period, may result in the elevation of the investigation to a Level Two Investigation.
- 2. Investigator: The Professional Standards office, or at the Chief's discretion, another investigator may be assigned to conduct the Level One investigation.
  - 3. Documentation: A thorough investigation and documentation using approved Professional Standards forms are required in a Level One investigation. All Level One investigations will be entered into the IACMS. Documented statements from involved parties are preferred unless circumstances make this impossible or unreasonable.
  - 4. Disciplinary action: A sustained Level One complaint may result in, but is not limited to, an oral or written reprimand, mandated training, suspension, demotion or termination. The Agency may also consider corrective action, modification of job duties, or other methods of correcting the behavior, regardless of the official finding.
  - 5. Finding: Level One investigations require an official finding as defined in this Policy.
  - 6. Review process: The completed file in a Level One Investigation shall be forwarded through the involved employee's chain of command for review and comment. Each supervisor in the chain of command shall review the investigation and findings, and prepare written recommendations as to the findings and administrative discipline and/or corrective action necessary. It shall then be forwarded to the Chief for his or her review and consideration. The Chief shall review the completed file of the administrative investigation, the chain-of-command supervisors' recommended findings, discipline and/or corrective action, and take one of the following actions:
    - (a) Send the case back for additional investigation
    - (b) Render one of the findings as defined in this Policy and authorize and/or impose any appropriate administrative discipline and corrective action. Prior to the Chief making his findings and disciplinary decisions where the chain of command has recommended the imposition of a suspension, involuntary demotion, or termination of a classified employee who has completed the introductory period, a pre-decision hearing will be scheduled and conducted as described in the City of Fort Collins Personnel Policies and Procedures. As soon as practical after the Chief renders his or her decision and determines whether any discipline and/or corrective action should be imposed, the



# Fort Collins Police Services

## Policy Manual

### *Administrative Investigations*

---

affected employee and the employee's chain of command shall be notified in writing. The complainant, if any, shall also receive written notification of the findings.

#### **(c) Level Two Investigation**

1. **General:** A Level Two investigation is one in which review by the Citizen Review Board may be required or anticipated. It includes allegations that:
  - (a) A police officer or community service officer used force or discharged a firearm in violation of an Agency Policy or applicable law;
  - (b) An employee committed a crime;
  - (c) As a result of a police officer's or community service officer's act or failure to act, a person sustained severe injury or death or suffered a civil rights violation;
  - (d) A police officer or community service officer used deadly force, whether or not the use of such force results in death; or
  - (e) Any other matter the Chief or the City Manager determines should be a Level Two investigation or forwarded to the Citizen Review Board for review.
2. **Investigator:** The Professional Standards Unit shall generally have the responsibility for conducting a Level Two investigation. At the Chief's discretion, another investigator may be assigned to conduct the investigation.
3. **Documentation:** A thorough investigation and documentation using approved Professional Standards forms are required in a Level Two investigation. All Level Two investigations will be entered into the IACMS. Documented statements from involved parties are preferred unless circumstances make this impossible or unreasonable.
4. **Disciplinary action:** A sustained Level Two complaint may result in, but is not limited to, an oral or written reprimand, mandated training, suspension, demotion or termination. The Agency may also consider corrective action, modification of job duties, or other methods of correcting the behavior, regardless of the official finding.
5. **Finding:** Level Two investigations require an official finding as defined in this Policy.
6. **Review process:** The completed file in a Level Two investigation shall be forwarded through the involved employee's chain of command for review and comment. Each supervisor in the chain of command shall review the investigation and findings, and prepare written recommendations as to the findings and administrative discipline and/or corrective action necessary.
  - (a) When a Force Review Board is required as described in Policy 301 - Response to Resistance Reporting and Review, that review will be conducted simultaneously with the chain of command review. If required by the City

# Fort Collins Police Services

## Policy Manual

### *Administrative Investigations*

---

Code (sections 2-139 and 2-140), both investigation files shall be forwarded to the Citizen Review Board for review.

- (b) The Chief of Police will then make a final review and decision based on the investigation and recommendations received. Prior to the Chief making his findings and disciplinary decisions where the chain of command has recommended the imposition of a suspension, involuntary demotion, or termination of a classified employee who has completed the introductory period, a pre-decision hearing will be scheduled and conducted as described in the City of Fort Collins Personnel Policies and Procedures. As soon as practical after the Chief renders his or her decision and determines whether any discipline and/or corrective action should be imposed, the affected employee shall be notified in writing. The complainant, if any, shall also receive written notification of the findings.

#### 1020.6.3 SPECIAL EXAMINATIONS

- (a) Administrative investigators may employ any investigative procedure, method, or tool that is reasonable and appropriate to each specific case, which may include, without limitation:
  - 1. polygraphs;
  - 2. intoxilyzers;
  - 3. blood tests;
  - 4. urine tests;
  - 5. finger printing;
  - 6. photographs;
  - 7. audio and video recordings;
  - 8. medical examinations;
  - 9. psychological examinations;
  - 10. laboratory examinations;
  - 11. lineups; and
  - 12. financial disclosures.
- (b) An employee under investigation may request such tests and examinations if it is reasonable to believe that such tests or examinations would be beneficial to the employee's defense. The Agency shall pay for the costs of such tests and examinations requested by the employee, unless they would be duplicative of tests or examinations already conducted by the Agency, in which case the employee shall be responsible for the costs of any such duplicative tests and examinations.

# Fort Collins Police Services

## Policy Manual

### Administrative Investigations

---

- (c) An employee under investigation may be compelled to submit to such tests and examinations that the investigator has reasonable grounds to believe may yield information or evidence relevant to the investigation. Refusal of an employee to submit to such tests and examinations shall subject the employee to disciplinary action, up to and including termination from employment with the Agency.
- (d) Polygraph examinations for supervisory-initiated or complainant-initiated administrative investigations will not be administered without specific prior approval of the Chief of Police. An employee who is the subject of a complainant-initiated administrative investigation shall not be required to take a polygraph examination unless the complainant has first undergone a polygraph examination and been found to have been truthful as to the material allegations, in the opinion of the examiner. An employee who is the subject of a supervisory-initiated administrative investigation may be required to take a polygraph examination regardless of whether or not any other person has first undergone a polygraph examination. When polygraph examinations are administered, they will be specifically, directly, and narrowly related to the performance of the employee's official duties, and to the issues raised in a specific investigation.
  - 1. Should an employee refuse to take a polygraph examination after being ordered to do so by the Chief in accordance with the above provision, the employee shall be subject to disciplinary action up to and including termination from employment within the Agency for refusal to obey an order.
  - 2. An examiner outside the Agency, chosen by the Chief shall administer polygraph examinations required under this Policy. The cost of such examinations shall be borne by the Agency.
  - 3. Employees, complainants, and witnesses may take another polygraph examination for the purposes of seeking a second opinion. The cost of second-opinion polygraph examinations shall be borne by the party seeking the second examination.
  - 4. All polygraph examinations in administrative investigations shall be recorded by audio and/or video equipment.
  - 5. The results of all polygraph examinations shall be included in the investigator's report.
  - 6. All polygraph examinations shall be specifically directed and narrowly related to the particular administrative investigation being conducted. All questions used shall be previewed with the person taking the exam. All parties involved in the chain-of-command review may consider the polygraph examiner's report. However, polygraph reports shall be construed only as an opinion to be considered together with all other aspects of the investigation.

#### 1020.6.4 ADMINISTRATIVE INVESTIGATIONS PROCEDURES

- (a) Timeliness

# Fort Collins Police Services

## Policy Manual

### Administrative Investigations

---

1. Administrative investigations shall be completed in an expeditious manner and consistent with the applicable deadlines set forth at Section 2-140 of the City Code having to do with review by the Citizen Review Board.
2. Allegations of past improper conduct by an Agency employee may be the subject of an administrative investigation regardless of the amount of time passed since the alleged misconduct.

#### (b) Conduct, Notification and Documentation of Investigation

1. The investigator conducting the administrative investigation shall, as soon as practical, notify the affected employee and the employee's chain of command in writing of the fact that the investigation is being conducted, unless the Chief determines that such notification may compromise the investigation. The investigator shall also refer the affected employee to the policies pertaining to the employee's rights and responsibilities relative to the investigation.
2. The Chief shall be promptly advised of any allegation of misconduct serious enough to possibly require immediate action, such as relieving the employee from duty.
3. While conducting an administrative investigation, the role of the investigator is that of a fact-finder. His or her purpose is to establish, as accurately and thoroughly as practical, the facts surrounding the incident, which precipitated the administrative investigation, and to render his or her finding. Administrative investigations shall be conducted in a fair and impartial manner.
4. Administrative investigations shall be conducted using all standard investigative methods, procedures, and tools appropriate and reasonable under the circumstances.

#### 1020.6.5 EMPLOYEE RIGHTS AND RESPONSIBILITIES IN AN ADMINISTRATIVE INVESTIGATION

- (a) Every Agency employee is required to establish and maintain a working knowledge of all City or Agency rules, regulations, Policies, procedures, and Training Directives. In the event of a performance complaint or alleged misconduct, it will be presumed that the employee was familiar with the City or Agency rules, regulations, Policies, procedures, and Training Directives in question.
- (b) All Agency employees are required to fully and truthfully cooperate in administrative investigations. During an administrative investigation, no employee can be disciplined for refusal to make a statement to a supervisor or answer a supervisor's questions unless he or she was first given an administrative investigation advisement (otherwise known as Garrity advisement) by a supervisor. The advisement shall include, in essence, the following:
  1. That the employee is required to answer truthfully all questions specifically directed and narrowly related to the performance of official duties.

# Fort Collins Police Services

## Policy Manual

### Administrative Investigations

---

2. Refusal to answer such questions truthfully will subject the employee to discipline, up to and including termination.
  3. Any statements the employee makes, including answers to questions, and any evidence which is gained as a result of such statements, cannot be used against the employee in any subsequent criminal proceedings.
- (c) While an administrative investigation is ongoing, no employee against whom a complaint has been filed, nor the employee's representative or attorney, shall contact any complainant or witness concerning the complaint or its investigation unless authorized to do so in writing by the Chief, nor shall any employee interfere with the investigation. However, once an investigation has been completed, if the employee receives notice that a pre-decision hearing is to be held, the employee and/ or his or her attorney may then contact the complainant or other witnesses in the investigation for the limited purpose of preparing information to present at the pre-decision hearing. The employee shall respect the right of the complainant or other witnesses to choose not to talk to the employee, or his or her attorney, regarding the investigation or the subject matter thereof. Further, no employee shall intimidate, threaten or harass any complainant or witness or attempt to persuade such complainant or witness to withhold or falsify any testimony or to absent him or herself from any administrative proceeding.
- (d) Any employee who becomes the subject of an administrative investigation shall be entitled to the following administrative process, which shall generally include the right to:
1. Be informed in writing, within a reasonable period of time of the complaint being filed, of the existence of the complaint and/or charge which initiated the administrative investigation, except that such disclosure may be withheld until the investigation is completed if the Chief determines that disclosure might jeopardize the investigation;
  2. An opportunity to respond to the complaint and/or charge;
  3. The Agency's consideration of the employee's response;
  4. A hearing before imposition of serious discipline. However, this pre-decision hearing is not applicable to authorized volunteers or classified employees who have not completed the introductory period, and unclassified employees as defined in the City of Fort Collins Personnel Policies and Procedures. Serious discipline means a suspension without pay, involuntary demotion, or termination of employment;
  5. Receipt of decision concerning discipline within a reasonable period of time; and
  6. If discipline is imposed, the opportunity to initiate a grievance, appeal, or issue resolution process as provided by applicable City of Fort Collins Personnel Policies and Procedures or any collective bargaining agreement that supersedes City Policies and Procedures. The grievance and appeal processes are not applicable to authorized volunteers or classified employees who have not completed the

# Fort Collins Police Services

## Policy Manual

### Administrative Investigations

---

introductory period and unclassified employees as defined in the City of Fort Collins Personnel Policies and Procedures.

- (e) An employee under administrative investigation shall have the right to be informed of the name and rank of the officer in charge of any interview or procedure required of the employee in the investigation prior to any interview or procedure. The employee shall also have the right to the presence of one representative of his or her choice during any such interview or procedure required of the employee in the investigation. However, the representative of the employee shall not be a witness or the subject or potential subject of the administrative investigation which is being conducted concerning the employee or be involved in either the employee's administrative or criminal investigation or be a supervisor in the chain-of-command of the employee. The employee shall also have the right to be informed prior to the interview or procedure of all other persons to be present during such interview or procedure, as well as which persons will participate in the interview or procedure.
- (f) The representative's role shall be restricted to that of an advisor to the employee, and not as a participant in the questioning or investigation. The employee's representative may not interfere with the questioning or investigation.
- (g) Administrative investigation interviews of the employee shall be conducted at reasonable hours, unless the seriousness of the allegation requires immediate action.
- (h) Administrative investigation interviews shall be at a time convenient to the Agency, and not at the convenience of the employee or of the employee's representative.
- (i) The duration of an administrative interview of an employee shall be for a reasonable period of time, and shall allow for reasonable personal necessities and rest periods.
- (j) An employee being interviewed shall not be subjected to offensive language or threatened with transfer or discipline. The investigator shall make no promise or offer of a reward to the employee as an inducement to answer questions.
- (k) An employee under administrative investigation may not review his or her investigation file until the investigation is completed. However, once the investigation is completed, the employee may review the file in accordance with this Policy.
- (l) The administrative interview of the employee may be recorded on audio and/or videotape by the Agency. The employee may request that the interview is recorded by the Agency and the employee is provided with a copy of the recording.
- (m) The administrative interview of the employee will take place in a private area within the Fort Collins Police Services building, or at any other location agreed to by both the Agency and the employee.
- (n) The Agency shall not discriminate against an employee when the conditions of employment and the standards of investigation procedures are utilized on his or her behalf. No employee should be discharged, demoted, disciplined, or denied promotion, or be threatened with any

# Fort Collins Police Services

## Policy Manual

### *Administrative Investigations*

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such treatment by reason of the lawful exercise of the rights granted herein, or the exercise of any rights under any existing administrative grievance procedure.

#### **1020.7 ADMINISTRATIVE DISCIPLINE AND CORRECTIVE ACTION**

- (a) As a result of corrective action for a performance issue, subject to the grievance and appeal procedures of the City of Fort Collins Personnel Policies and Procedures or any collective bargaining agreement that supersedes City Policies and Procedures, if applicable, any supervisor acting within the scope of his or her supervisory duties may administer oral counseling, mandated training, or reprimand (with an accompanying Disciplinary Action Form), and/or impose corrective action for a minor violation of any Agency rule, regulation, Policy, procedure, or Training Directive.
- (b) Subject to the grievance and appeal procedures of the City of Fort Collins Personnel Policies and Procedures or any collective bargaining agreement that supersedes City Policies and Procedures, if applicable, the Chief is authorized to impose and shall be the final authority as to the imposition of administrative discipline and corrective action within the Agency. He or she may follow, but is not bound by, the findings and recommendations of supervisors or of the Citizen Review Board.
- (c) The imposition of discipline or corrective action as a result of an administrative investigation shall in no way preclude further sanctions imposed in any subsequent civil or criminal proceeding. Conversely, the outcome of any criminal or civil proceeding against an employee of this Agency shall not preclude the imposition of administrative discipline or corrective action.
- (d) A finding of "Exonerated" or "Not Sustained" as defined in this Policy does not prohibit the Chief or supervisors from recognizing potential employee problems and requiring corrective action.
- (e) Any employee who refuses to submit to the procedures described in this Policy after being ordered to do so by the Chief or the employee's supervisor may be subject to disciplinary action up to and including termination of employment from the Agency.

##### **1020.7.1 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE**

In the event that an employee tenders a written retirement or resignation prior to the imposition of discipline, it shall be noted in the file. The tender of a retirement or resignation by itself shall not serve as grounds for the termination of pending discipline or official finding by the Chief.

#### **1020.8 ADMINISTRATIVE INVESTIGATION FILES**

- (a) Files relating to administrative investigations are confidential, the property of the Agency, and shall be maintained by the PSU. Access to such files shall be limited to PSU personnel and those specific persons authorized by the Chief. However, a supervisor conducting an

# Fort Collins Police Services

## Policy Manual

### Administrative Investigations

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ongoing administrative investigation of an employee may have access to all administrative investigation files of that employee, if the Chief first approves such access.

- (b) Except as provided in this Policy, records pertaining to administrative investigations shall not be released without the prior approval of the Chief.
- (c) After an administrative investigation has been completed and reviewed by the Chief, employees may request, in writing, permission from the Chief to review the contents of an administrative investigation file in which they are accused of misconduct. The Chief may deny the employee inspection of all or any part of such an administrative investigation file if the Chief determines such inspection is not in the best interest of the Agency or of any witness involved, or that such inspection would compromise the investigation.
  - 1. Unless otherwise permitted by the Chief, such "review" by the employee shall be limited to reading and cursory note-taking, and shall not include photocopying or otherwise recording the entire contents of the file.
  - 2. However, upon written request, an employee accused of misconduct shall be provided with a copy of his or her statement(s).
- (d) Administrative investigation files will be maintained and archived in accordance with the agency's records retention schedule and State law.

#### **1020.9 DISCIPLINARY ACTION INFORMATION RELEASE**

On occasion, it is necessary and appropriate to administer corrective action or actual discipline to an employee in order to correct his or her behavior. While supervisors and staff members may be informed of a disciplinary action, discipline is a private matter that should be kept between the employee, his or her supervisors, and other people directly involved in the incident. Therefore, it is Agency Policy to keep disciplinary matters confidential, and to maintain personnel files in a secure area with controlled access. Exceptions to the Policy concerning disciplinary action information release may be made at the discretion of the Chief of Police.





### ***Fort Collins Police Services***

### ***Comments on Employee Conduct***

Fort Collins Police Services strives to maintain high standards of quality professional law enforcement services to the citizens of Fort Collins and encourages your feedback on how we are performing.

We often receive comments, both positive and negative, from citizens regarding the conduct of our employees. We like to hear when we perform our jobs well, and when improvements can be made. Occasionally we fall short of our goal of quality service and when we do, we would like to hear about it.

### **Complaint Process**

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#### **How do I make a complaint?**

A person can make a complaint to Fort Collins Police Services in person, by telephone, by letter, e-mail, or by filling out an Internal Affairs Complaint Packet. Complaint Packets can be obtained at Fort Collins Police Services, the downtown Fort Collins Library, the Aztlan Center, the City Manager's Office, or on-line at: [fcgov.com/police/employee-conduct.php](http://fcgov.com/police/employee-conduct.php). Information about the complaint process is available in both English and Spanish.

When a complaint is made in person, the complainant will be immediately referred to the employee's supervisor or an on-duty supervisor. In the event a supervisor is not immediately available, the employee receiving the complaint will take as much information as possible and advise a supervisor at the earliest moment.

#### **What are the different classifications of complaints?**

There are three classifications of complaints: a Performance Complaint, a Level One Complaint, and a Level Two Complaint.

A Performance Complaint generally involves service dissatisfaction and may involve a person's perception about an employee's behavior, a minor violation of agency policy, procedure or training, or a concern expressed about the way an incident was handled. The employee's direct supervisor is responsible for investigating a Performance Complaint and imposing any applicable discipline.

A Level One Complaint generally involves an allegation that, if substantiated, could result in disciplinary action beyond that usually expected in a Performance Complaint. Allegations of inappropriate tactics, racial profiling, dishonest conduct, and sexual harassment are examples. These allegations can be handled by the employee's direct supervisor or by Internal Affairs. Upon completion of the investigation, the case is reviewed by the involved employee's chain of command including the Chief of Police.



A Level Two Complaint generally involves the most serious and may include allegations of excessive force, a violation of law, civil rights violations, etc. These complaints are normally investigated by Internal Affairs and are reviewed by the involved employee's chain of command including the Chief of Police. Prior to the Chief rendering his/her final decision, the Citizen Review Board will review the case.

### **What happens when I file a complaint?**

In most cases, the involved employee's immediate supervisor will investigate the matter. In some circumstances, depending upon the nature of the complaint, Internal Affairs may conduct the investigation. Complainants will be advised who is investigating their complaint.

The investigating supervisor may contact the complainant and witnesses in person or by telephone and a written statement may be requested. The involved employee(s) will also be interviewed about the incident.

The employee's chain of command will review the investigation (Level One and Level Two) to determine whether the employee's conduct violated any agency policy, procedure, or training and to make recommendations regarding corrective action. If the complaint requires a review by the Citizen Review Board (CRB), the Chief of Police will render a finding following the CRB review. The complainant will receive written notification of the Chief's finding. Disciplinary or corrective action taken against the employee is confidential and protected by personnel law; it will not be made public.

The entire process can take several weeks for a Performance Complaint and up to several months for a Level One or Level Two Complaint to be completed. Additional time is required and allowed by City ordinance if the complaint is reviewed by the CRB. Questions about the complaint process or the status of a case should be referred to Internal Affairs, (970) 221-6831.

### **What do the results of the investigation mean?**

After the investigation, reviews, and recommendations have been completed, a final disposition or finding is made. There are five possible dispositions at the conclusion of an investigation for a Level One and Level Two Complaint:

- **"Sustained"**: The allegation is supported by sufficient evidence establishing that the employee violated one or more Agency policy, procedure or training.
- **"Not sustained"**: There is insufficient evidence to prove or disprove the allegation.
- **"Exonerated"**: The incident occurred, but the employee's behavior did not violate any Agency policy, procedure, or training.
- **"Unfounded"**: The allegation was false or not factual.
- **"Not involved"**: The employee was not involved in the incident.



**I want to file a complaint on an employee's conduct.**

If you would like to make a complaint about a Fort Collins Police Services employee, please read the **Complaint Process** and **Complaining Party's Rights and Responsibilities** and then complete the following documents:

- **Complaint Intake Instructions**
- **Incident Summary**

The completed forms may be mailed to or returned to:

Fort Collins Police Services  
Internal Affairs  
2221 S. Timberline Road  
Fort Collins, Colorado 80525

Faxed to Internal Affairs: (970) 224-6088

Emailed to: [internalaffairs@fcgov.com](mailto:internalaffairs@fcgov.com)

**Comments/Message Line.**

You can leave a comment or message regarding your contact with a Police Services employee by leaving a message at (970) 416-2492 or by completing the following document and returning it as directed above.

- **Employee Conduct Comments**

**Fort Collins Police Services Internal Affairs.**

Sgt. Jackie Pearson  
(970) 221-6831  
[internalaffairs@fcgov.com](mailto:internalaffairs@fcgov.com)

**Citizen Review Board.**

The Citizen Review Board can be reached by

Mail: Citizen Review Board  
c/o Fort Collins City Clerk's Office  
P.O. Box 580  
Fort Collins, Colorado 80522

Voicemail: (970) 416-2707

Email: [crb@fcgov.com](mailto:crb@fcgov.com)



**Fort Collins Police Services**  
***Complaining parties rights & responsibilities in an  
administrative investigation***

In an Internal Affairs Investigation, a complainant has the following rights and responsibilities. Individuals wishing to comment or complain about the conduct of Agency employees will be treated with respect and professionalism.

- The right to have one representative of the complainant's choice present while being interviewed during the investigation. The representative's role shall be restricted to that of an advisor to the complainant, and not as a participant in the questioning and/or investigation.
- Complainant interviews shall be scheduled at the mutual convenience of the Agency and the complainant, and not necessarily at the convenience of the complainant's representative, if any.
- Interviews shall be conducted at a reasonable hour, unless the seriousness of the investigation required immediate action.
- The duration of the complainant's interview shall be for a reasonable period of time, and shall allow for reasonable personnel necessities and rest periods.
- The complainant has the right to a copy of his or her statement.
- The complainant has the right to notification of the findings of a Level One or Level Two investigation.
- The investigation will include one of the following findings:
  - "Sustained": The allegation is supported by sufficient evidence establishing that the employee violated one or more Agency policy, procedure, or training.
  - "Not sustained": There is insufficient evidence to prove or disprove the allegation.
  - "Exonerated": The incident occurred, but the employee's behavior did not violate any Agency policy, procedure or training.
  - "Unfounded": The allegation was false or not factual.
  - "Not involved": The employee was not involved in the incident.
- If the investigation has not been reviewed by the Citizen Review Board, the complainant has the right to request such review by filing a written request with the Chief of Police or the City Manager's Office within 15 calendar days of the complainant's receipt of the written findings.
- The Chief of Police makes the final decision on findings in administrative investigations



## **Fort Collins Police Services**

### **Complaint Intake Instructions**

<b>Name:</b>	<b>DOB:</b>
<b>Home Address:</b>	<b>Home:</b>
	<b>Cell:</b>
<b>Business Address:</b>	<b>Phone:</b>
	<b>Fax:</b>

<b>Witness Name:</b>	<b>DOB:</b>
<b>Witness Address:</b>	<b>Home:</b>
	<b>Cell:</b>

<b>Date/Time of Incident:</b>	<b>Case #:</b>
<b>Location of Incident:</b>	

<b>Employee/Officer Name:</b>
<b>Vehicle Information:</b>

Please take the time to read and understand each form included in the packet. It is important to be as detailed as possible so that your concerns can be addressed as quickly and as thoroughly as possible. The following forms are included:

- Intake Instructions (this form)
- Incident Summary
- Complaint Process Information
- Complainant's Rights and Responsibilities
- Self-addressed, stamped envelope

Additional forms, including Spanish translations, can be obtained at Fort Collins Police Services, the downtown Fort Collins Library, the Aztlan Center, the City Manager's Office, or on-line at <http://www.fcgov.com/police/employee-conduct.php>.

Please fill in all applicable blanks on this form and then provide a detailed description of the incident on the Incident Summary form. The forms may then be faxed to, mailed, or left at;

Fort Collins Police Services  
Attn: Internal Affairs  
2221 S. Timberline Road  
P.O. Box 580  
Fort Collins, CO 80522-0580  
Office: (970) 221-6831; Fax: (970) 224-6088  
Email: [internalaffairs@fcgov.com](mailto:internalaffairs@fcgov.com)

Revised 10-2016



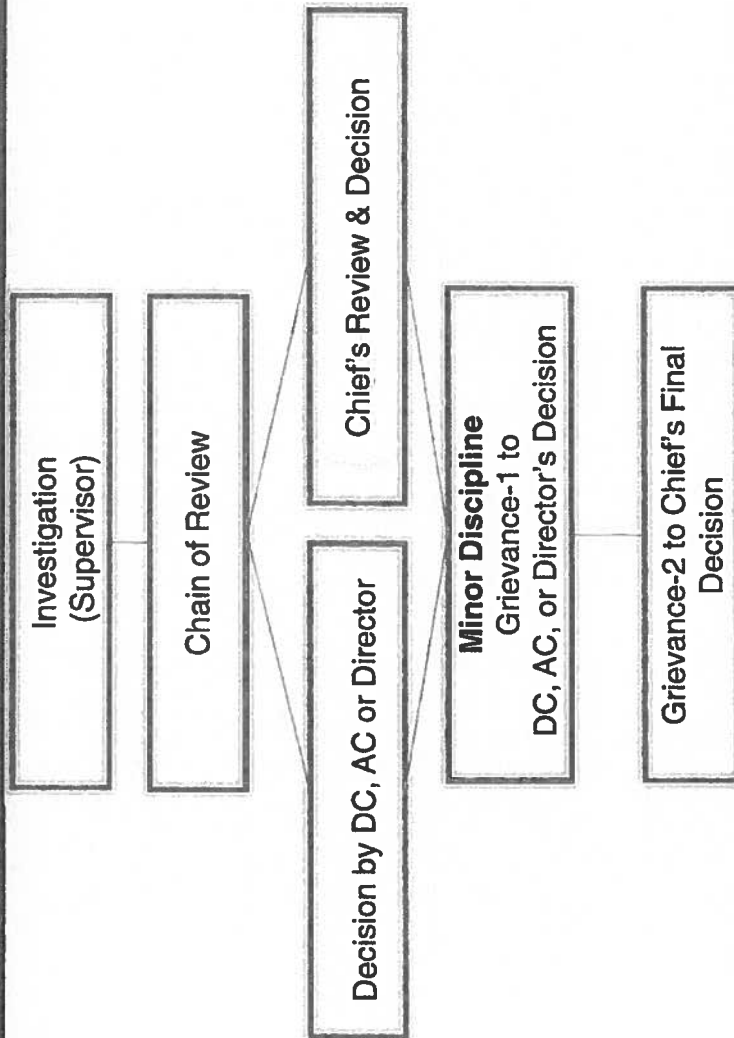








# Performance Complaint



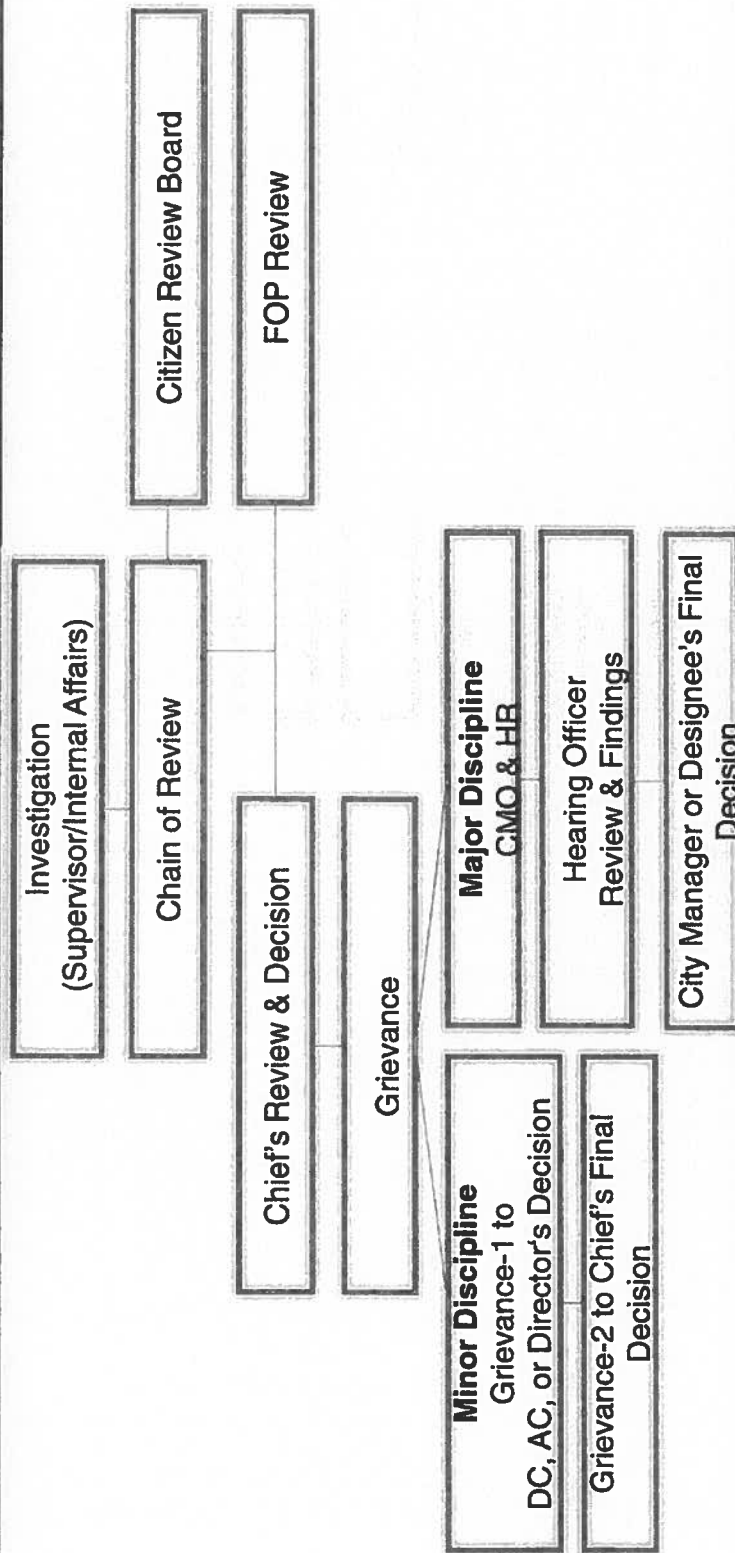


## **Performance Complaints**

This may involve a citizen's perception about an employee's behavior; a minor violation of Agency Policy, procedure or practice; or a concern expressed about the way an incident was handled. Subsequent performance issues involving similar conduct by the same employee within a twelve-month period may result in the elevation of the investigation to Level One.



# Level One Investigation





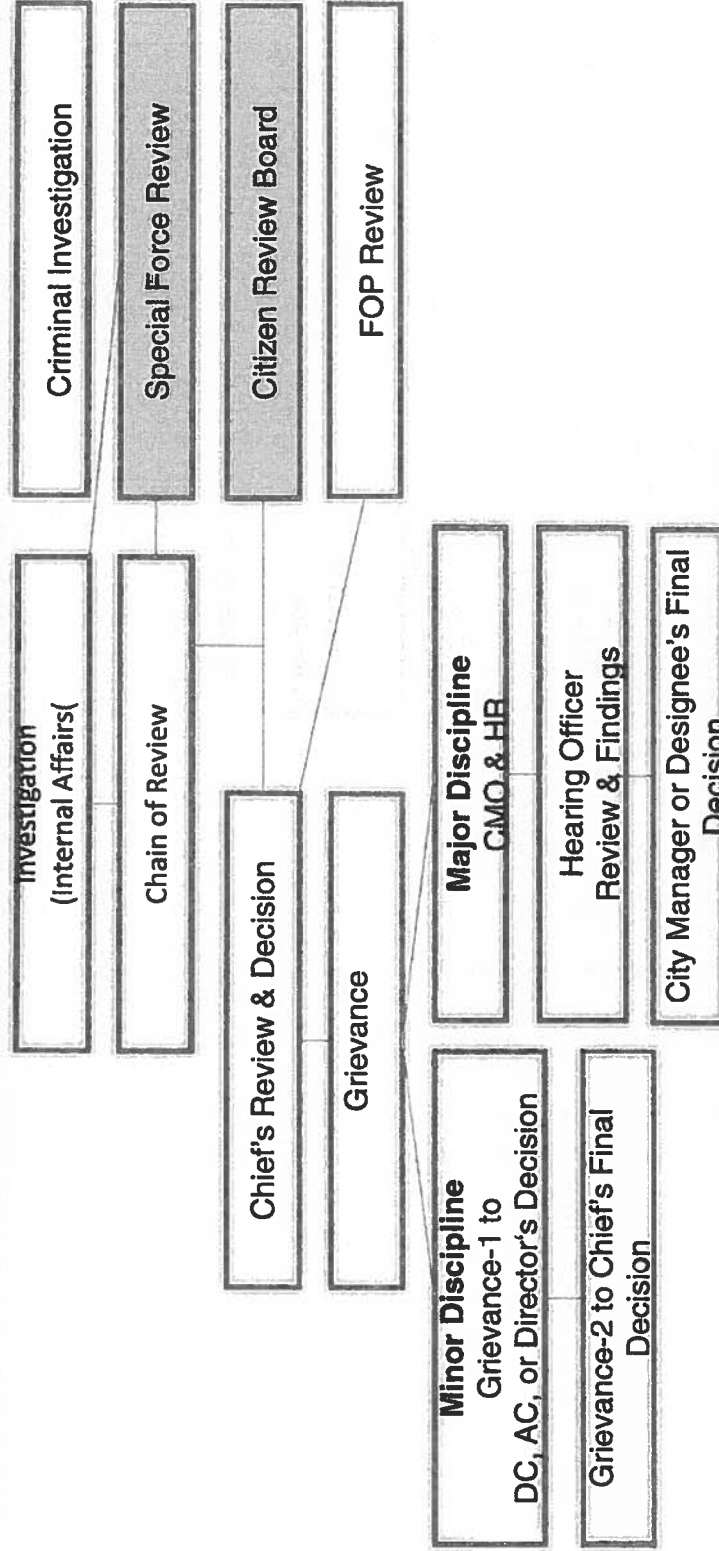
## Level One Investigation examples\*

1. The police tactics used were inappropriate or unwarranted, but do not rise to the level of a Use of Force allegation that would be classified as a Level Two investigation.
2. An employee's behavior presented a serious safety risk to another person or a significant threat to property damage.
3. An employee's driving presented a significant safety risk to another person or a significant threat of property damage, whether or not it resulted in a motor vehicle accident.
4. An employee was involved in dishonest, untruthful or fraudulent conduct
5. An employee engaged in conduct that tends to seriously impair the operation or morale of the Agency, may cause the public to lose the confidence in the police department, violates the public trust, or affects the reputation of the Agency or any employee.
6. An employee's treatment of others was biased, unequal, or discriminatory in nature, but not rising to the level of a civil right violation that would be classified as a Level Two investigation.
7. An employee participated in sexual harassment of another employee or citizen. Subsequent Level One investigations involving similar conduct by the same employee within a twelve-month period may result in the elevation of the investigation to a Level Two Investigation.



## Level Two Investigation

Citizen Review Board may be required or anticipated





## Level Two investigations

**Level Two investigation is one in which review by the Citizen Review Board may be required or anticipated. It includes allegations that:**

1. A police officer or community service officer used force or discharged a firearm in violation of an Agency Policy or applicable law;
2. An employee committed a crime
3. As a result of a police officer's or community service officer's act or failure to act, a person sustained severe injury or death or suffered a civil rights violation;
4. A police officer or community service officer used deadly force, whether or not the use of such force results in death; or
5. Any other matter the Chief or the City Manager determines should be a Level Two investigation or forwarded to the Citizen Review Board for review.

### Cities with Similar Ordinances

**Denver (*proposed ordinance only*):** On April 27<sup>th</sup>, 2017, Denver community members proposed a city ordinance that would bar the Denver Sheriff Department from notifying federal immigration officials when they have an inmate wanted for deportation unless the City is provided: (1) a criminal warrant issued by a judge or other neutral magistrate, or (2) information that would support a criminal arrest without a warrant.

The ordinance states that local immigration enforcement produces “discrimination . . . that violates the public policy of the City of Denver and offends principles of equal protection under international law” as well as harming “community policing efforts and erod[ing] community trust,” especially for those residents who are victims of or witnesses to crime.

The ordinance further states that “no City funds shall be expended to respond to or comply with any request from federal immigration officials to detain a person or maintain custody of a person beyond the time when the person would otherwise have been released,” unless such action is warranted (e.g. criminal warrant issued by judge).

**Los Angeles:** Became one of the country's first sanctuary cities, if not the first, back in 1979. Los Angeles Police Chief Charlie Beck declared that his department will not “engage in law enforcement activities solely based on somebody's immigration status.” Current LAPD policy is to let immigration enforcement be the responsibility of the federal government and to require a court warrant to assist or cooperate with ICE.

**New York:** Does not hold undocumented inmates in jail at the request of the U.S. Department of Immigration and Customs Enforcement (ICE) unless the detainer request is accompanied by a judge's order, officials said.

**Oakland:** Reaffirmed its status recently as a sanctuary city and asked California Gov. Jerry Brown to declare the entire state a sanctuary for undocumented immigrants. Oakland's resolution bars its police department from conducting immigration raids and turning over undocumented immigrants to federal authorities unless criminal activity is involved.

**Baltimore:** Mayor Stephanie Rawlings-Blake reaffirmed that the city police will continue its policy of not asking about a person's immigration status, stipulating that she considers Baltimore a “welcoming city” but not a “sanctuary city.”

**Portland:** Declared itself a sanctuary city without enacting any laws to back up that claim. This mainly means that local law enforcement has been asked not to work with U.S. Immigration and Customs Enforcement (ICE) to help deport undocumented immigrants.

**Providence:** Does not refer undocumented immigrants charged with low-level civil infractions to federal immigration authorities. Mayor Jorge Elorza, the son of Guatemalan immigrants, does not consider Providence a sanctuary city, but he did declare in a statement, "We are standing with cities like Los Angeles and New York City who have made it clear that we will not sacrifice a single resident and we will continue to protect our communities."

**New Orleans:** Police will no longer cooperate with federal immigration enforcement. The new policy, which went into effect Sunday (Feb. 28), preserves the ban on inquiries from police officers into an individual's immigration status and extends it to cover anyone officers come into contact with, including potential suspects. Should officers learn that someone is in the country illegally, they are forbidden from sharing that information except under court order.

The new rules also cut off regular cooperation with federal Immigration and Customs Enforcement outside criminal investigations. Immigration violations, such as overstaying a visa, the most common way for undocumented immigrants to enter the country, are usually civil matters. The new policy also explicitly forbids cooperating with ICE on raids of establishments where undocumented immigrants are suspected to be. The department will now only assist if there is a clear public safety interest or there has been a warrant issued by a judge. The department will also ignore arrest warrants issued by ICE unless they are for criminal charges.

**Seattle:** The sanctuary status stems from a 2003 ordinance. Unless otherwise required by law or court order, the ordinance bars police officers from inquiring into a person's immigration status without reasonable suspicion that the person has been previously deported and has committed a felony. The Seattle Police Department manual tells officers not to ask for or act on a person's immigration status.

**Boston:** The Trust Act, passed unanimously by the City Council and signed by Mayor Marty Walsh in 2014, prohibits Boston police from detaining anyone based on their immigration status unless they have a criminal warrant.

**San Francisco:** San Francisco has put in place some of the most expansive sanctuary city laws in the country. In 1989, it passed the "City



and County of Refuge" Ordinance (also known as the Sanctuary Ordinance) which prohibits City employees from helping Immigration and Customs Enforcement (ICE) with immigration investigations or arrests unless such help is required by federal or state law or a warrant. It also prohibits the city from using any "funds or resources to assist in the enforcement of federal immigration law or to gather or disseminate information regarding the immigration status" of residents unless explicitly required by federal or state law or court order.

In February 2007, Mayor Gavin Newsom reaffirmed San Francisco's commitment to immigrant communities by issuing an Executive Order that called on City departments to develop protocol and training on the Sanctuary Ordinance. A section in the city's administrative code also prevents any city law enforcement officer from detaining an individual "on the basis of a civil immigration detainer after that individual becomes eligible for release from custody."

Similar to other sanctuary cities, exceptions apply to individuals convicted of violent felonies within the past seven years or in custody for another violent felony.

[However, it should be noted that in 2015, San Francisco was at the center of the sanctuary city debate when a young woman was killed by an undocumented Mexican immigrant who had reportedly been deported five times, had seven previous felony convictions and had just been released from the sheriff department's custody.]

