

## **Resolution Regarding the Consideration of Federal Immigration Status in the Village of Pelham**

**Whereas**, the Village of Pelham values diversity and respects the civil and human rights of all residents and visitors regardless of race, ethnicity, immigration status, national origin, gender, religion and/or any other protected characteristic; and

**Whereas**, the Mayor issued a statement respecting immigration on February 23, 2017 and the Mayor and the Board of Trustees of the Village of Pelham have heard public comment over several public meetings respecting immigration issues and fundamental Constitutional rights including the condemnation of the use of violence, bigotry, and hateful rhetoric; and

**Whereas**, the Village of Pelham and its service departments have made it a priority to gain the trust and confidence of the entire community so that all feel that it is safe to contact and work with village officials and employees and to access other vital village services; and

**Now, therefore, be it resolved** by the Board of Trustees of the Village of Pelham, County of Westchester, State of New York, a majority of all members elected thereto concurring:

**PREAMBLE:** The Village of Pelham reaffirms its commitment to civil rights and equal access to all Village services, including police and fire protection, and all other services. Accordingly, no Village Services shall be denied on the basis of citizenship. Village staff shall follow general village, state, and federal guidelines to assess eligibility for Village services. This prohibition shall not apply to persons seeking employment, or as otherwise required by federal or state statute, regulation, or court decision nor shall this resolution in any manner interfere with applicable civil service law, rules and procedure. All department heads in the Village of Pelham are hereby directed to enact departmental procedures consistent with the policy set forth below.

### **I. PURPOSE**

To establish procedures to be followed by Village of Pelham departments when encountering persons who actually or are suspected to have entered or remained in the United States unlawfully.

### **II. POLICY**

Members of the Village of Pelham departments shall not engage in enforcement activities solely for the purpose of enforcing federal immigration law nor detain persons based solely upon the suspicion that such person has entered or remained in the United States unlawfully except as provided for herein

### **III. PROCEDURE**

A. Enforcement actions and community interactions.

1. Members shall not stop, question, interrogate, investigate, or arrest an individual based solely on any of the following:

a. Actual or suspected immigration or citizenship status; or

b. A "civil immigration warrant," administrative warrant, or an immigration detainer (collectively, "Immigration Detainers") in the individual's name, including those identified in the National Crime Information Center (NCIC) database.

NOTE: Immigration Detainers are not criminal warrants issued by a judge and may not provide sufficient basis to detain an individual or to prolong the detention of an individual detained for other reasons.

2. Members shall not inquire about the immigration status of an individual, including a crime victim, a witness, or a person who calls or approaches the police seeking assistance, unless necessary to investigate criminal activity by that individual.

3. Members shall not perform the functions of a federal immigration officer or otherwise engage in the enforcement of federal immigration law--whether pursuant to Section 1357(g) of Title 8 of the United States Code or under any other law, regulation, or policy.

#### **B. U.S. Immigration and Customs Enforcement ("ICE") or Customs and Border Protection ("CBP") detainer requests.**

The Village of Pelham will not detain individuals for extended periods of time. To the extent any request is made regarding an individual in the custody of the Village of Pelham, our police officers may respond affirmatively to a "civil immigration detainer" from ICE or CBP to detain or transfer an individual for immigration enforcement or investigation purposes for a reasonable period ONLY IF:

a. the request is accompanied by a judicial warrant, or

b. there is probable cause to believe that the individual has or is engaged in terrorist activity. or

c. there is probable cause to believe that the individual has illegally reentered the country after a previous removal or return as defined by 8 U.S.C. § 1326 and the subject of the civil immigration detainer:

- is identified as a possible match in the terrorist screening database; or
- has been convicted of a violent or serious crime; or
- has pending charges that allege violent criminal conduct; or
- poses a serious and imminent danger to the community at large; or

- may have information, as determined by the Police Chief, related to an ongoing criminal investigation unrelated to the immigration status of the detainer subject.

**C. ICE or CBP requests for certain non-public, sensitive information or CBP detainer requests.**

1. Department members may respond affirmatively to an ICE or CBP request for non-public information about an individual- including but not limited to nonpublic information about an individual's release, home address, or work address - ONLY IF the request is accompanied by a judicial subpoena or judicial warrant:

**EXCEPT THAT** nothing in this order prohibits a department head or their designee ) in coordination with the Village Administrator and Village Attorney:

1. sending to or receiving from any local, state, or federal agency- as per 8 U.S.C. § 1373-(i) information regarding an individual's country of citizenship or (ii) a statement of the individual's immigration status; or
2. disclosing information about an individual's criminal arrests or convictions, where disclosure of such information about the individual is otherwise permitted by state law or required pursuant to subpoena or court order; or
3. disclosing information about an individual's juvenile arrests or delinquency or youthful offender adjudications, where disclosure of such information about the individual is otherwise permitted by state law or required pursuant to subpoena or court order.

All review and response to requests for information from ICE or CBP shall be handled by department head or their designee in coordination with the Village Administrator and Village Attorney.

**IV. SEVERABILITY**

If any clause, sentence, paragraph, section or part of any section of this General Order shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy and in which such judgment shall have been rendered.