

ORDINANCE #38

TOWN OF HANOVER ORDINANCE OF THE SELECTBOARD

The Selectboard of Hanover, New Hampshire, ordains as follows:

Fair and Impartial Policing

Declaration of Purpose:

The purpose of this Ordinance is to prevent biased policing and other discriminatory practices in any law enforcement-related activity involving an officer of the Hanover Police Department. This Ordinance is intended to ensure that Department members honor the human and constitutional rights of those with whom they come into contact. Nothing herein shall be construed to prevent Department members from engaging in lawful police activity, including ascertaining the identity of persons lawfully detained or arrested for criminal conduct, or to confirm or dispel reasonable suspicion of criminal conduct concerning any violation of state or federal law.

Title:

This Ordinance shall be known and may be cited as the “Fair and Impartial Policing Ordinance of the Town of Hanover.”

Authority:

NH RSA 39:3 and RSA 47:17.

Preamble:

As a community dedicated to welcoming diversity, the Town of Hanover affirms the human and civil rights of all people.

Within that context, it is the policy of the Hanover Police Department to respect and protect the constitutional rights of all individuals during law enforcement contacts and/or enforcement actions. In addition to respect for those human rights prescribed by law, Department members will treat all persons with the courtesy and dignity that is inherently due every person. Department members will act, speak and conduct themselves in a professional manner, and, whenever possible, maintain a courteous, professional attitude in all contacts with the public.

In the absence of any specific report of criminal conduct or reasonable suspicion of criminal conduct, the actual or perceived race, ethnic background, color, spoken language, age, gender, sexual orientation, gender identity or expression, religion, economic status, cultural group or any other identifiable group of any person will not be the basis for the detention, interdiction or other disparate treatment of any individual by any member of the Department.

The Town of Hanover and its law enforcement officers recognize and affirm that:

1. If an individual is undocumented in the United States, this is not a crime; immigration is a civil matter.
2. Department officers may not stop, detain, arrest, or otherwise hold an undocumented individual, absent reasonable suspicion of criminal conduct.
3. If an undocumented individual is stopped, detained, arrested, or otherwise held based on reasonable suspicion of criminal conduct, the individual shall be processed in the ordinary course of the law enforcement conduct and the criminal judicial system; and the individual shall not be detained or otherwise held any longer than otherwise necessary in the ordinary course of law enforcement conduct and the criminal judicial system.
4. If an undocumented individual is stopped, detained, arrested, or otherwise held based on reasonable suspicion of criminal conduct, Department officers must treat that individual in the same manner as any other individual would be treated for similar criminal process.
5. Department officers may not contact, or otherwise notify, ICE about the undocumented individual based solely on an individual's undocumented status.

Definitions:

Biased Policing: The arrest, detention, interdiction, or other disparate treatment of an individual, without reasonable suspicion of criminal conduct, on the basis of the race, ethnic background, color, spoken language, age, gender, sexual orientation, gender identity or expression, religion, economic status, cultural group or other identifiable group of such individual, except when such status is used in combination with other identifying factors in seeking to apprehend a specific criminal suspect whose racial or ethnic status is part of the description of the suspect.

Reasonable Suspicion of Criminal Conduct: Also known as “articulable suspicion” of criminal conduct. Suspicion that is more than a mere hunch, but is based on a set of articulable facts and circumstances that would warrant a person of reasonable caution in believing that an infraction of the law has been committed, is about to be committed, or is in the process of being committed, by the person or persons under suspicion. This can be based on the observations of a police officer combined with his or her training and experience, and/or reliable information received from credible outside sources.

Police Procedures:

I. Prohibition of Biased Policing

- A. Biased policing of individuals by officers of this department is prohibited.
- B. Stops or detentions based solely on race, ethnic background, color, language, age, gender, sexual orientation, gender identity or expression, religion, economic status, cultural group, or any other prejudicial basis by any officer of this department are prohibited.
- C. The detention of any individual, which is not based on factors related to reasonable

suspicion of a violation of state and/or federal criminal law, or any combination thereof, is prohibited.

D. Officers will not use actual or perceived race, ethnic background, color, language, age, gender, sexual orientation, gender identity or expression, religion, economic status, cultural group or other identifiable group of such individual as the sole basis for developing reasonable suspicion or grounds for a traffic or street stop, or in deciding upon the scope and substance of post-stop action.

E. Officers must be able to clearly articulate the specific law enforcement or public safety purpose of any traffic stop or other contact.

F. When determining if reasonable suspicion exists for a stop, search or detention, or when developing probable cause for an arrest, officers may consider the factors above, when one or more of those factors are part of the description of a known or suspected criminal offender wanted in connection with a specific criminal or suspicious incident based on a credible report.

G. Asset seizure and forfeiture efforts will be based on violations of state and/or federal law, or any combination thereof; and shall not be motivated by race, color, language, ethnicity, age, gender, sexual orientation, gender identity or expression, religion, economic status or cultural group.

II. Matters Relating to Immigration and Citizenship Status:

A. The Hanover Police Department presently lacks the legal authority to enforce non-criminal civil violations of federal immigration law.

B. An individual's presence in the United States without proper documentation or authority, standing alone, is not a criminal violation.

C. Officers may not stop, investigate, detain or question an individual solely for the purpose of determining whether the individual is in the United States without authorization and proper documentation.

D. Officers may not initiate an investigation, stop, or detention, or extend an existing stop or detention, based solely on information or suspicion that an individual is in the United States without authorization and proper documentation.

III. Department Inquiries Concerning Citizenship Status

A. *When ID is Needed and Not Provided:* If a Department officer needs to identify an individual who has been lawfully detained or arrested regarding criminal conduct, and that individual does not have identification, then the Department officer may use whatever tools are reasonably necessary, including federal databases, to identify the individual under the circumstances. Department officers should not ask passengers for identification, including for the purpose of determining their immigration status, when

the passengers themselves are not suspected of a crime or motor vehicle violation, unless the passenger(s) is a witness to criminal activity.

B. When ID Provided: Valid identification may include a foreign passport, consular identification, or other acceptable identification issued by a person's nation of origin or government-issued documents that are reasonably reliable, subject to the same reasonable scrutiny and follow-up for authentication as any other forms of identification. However, an officer should not call any federal immigration authority simply because a person presents foreign identification, absent a reasonable suspicion that the identification is invalid or fraudulent.

C. Asking about Immigration Status: Department officers should not ask an individual about his or her immigration status when investigating a crime or civil violation, like a stop for traffic violation or a violation of a municipal ordinance. An officer may ask an individual about his or her immigration status only if the department officer is conducting a criminal investigation or an investigation of criminal activity based on reasonable suspicion AND the immigration status of the suspect is relevant to the investigation, provided that the investigation is initiated for a reason or reasons independent of information or suspicion that an individual is (or individuals are) in the United States without proper authorization in violation of the civil provisions of federal immigration law.

IV. Qualified Language Interpretation Services:

Under federal law, law enforcement agencies that receive federal funds are required to provide qualified interpretation services, either in person or telephonically, to any person in need of such services. However, Department officers may not contact federal immigration authorities for interpretation services. The officer shall not ask about the immigration status of the person for whom interpretation services are sought.

V. Detention and Search:

A. No motorist, once cited or warned, shall continue to be detained if there is no reasonable suspicion of further criminal activity, and no person or vehicle shall be searched in the absence of consent, a warrant, or a legally recognized exception to the warrant requirement.

B. It is strongly recommended that consent searches only be conducted with written consent, using the proper department form. If the individual indicates that they will consent to a search but are refusing to sign the form, the officer may nevertheless fill out the form and indicate "consented to search but refused to sign," inserting initials and the signature of any witness in the signature block.

C. If an officer reasonably believes, based on a totality of the circumstances, that an individual does not comprehend or understand the basis for providing consent for a valid search, including disability, incapacity, or language, the officer should not conduct a

search, absent exigent circumstances.

VI. ICE Detainers:

A. One purpose of an ICE detainer is to notify a law enforcement agency that ICE is interested in that person who is in that agency's custody, and to request that the agency hold that person after the person is otherwise entitled to be released from the criminal justice system, giving ICE extra time to decide whether or not they should take the person into federal custody for administrative proceedings in immigration court.

B. *ICE detainers are not criminal arrest warrants.* Unlike criminal warrants, which are supported by a judicial determination of probable cause, ICE detainers are issued by ICE enforcement agents without any authorization by a judge. An ICE detainer is not an indication that probable cause exists that the individual in question has committed a crime; ICE detainers are mere requests, not commands. Under federal law, local law enforcement agencies are not required to hold anyone based on an ICE detainer. Accordingly, many courts have ruled that local law enforcement officials violate the Fourth Amendment of the United States Constitution when they temporarily detain individuals for immigration violations, without probable cause of criminal conduct, based on ICE detainers.

C. Because an ICE detainer is not based upon probable cause that a crime has been committed, if an officer in the Department receives an ICE detainer for an individual who has been detained or arrested, the officer shall not prolong the individual's detention based on the ICE detainer.

VII. Response to Federal Immigration Inquiries:

Department officers do not have authority to enforce federal civil immigration law. In the absence of any criminal conduct, no department officer shall aid or participate in civil immigration enforcement activities carried out by the Federal or State government.

Accordingly, no law enforcement officer of the Town of Hanover, or any informants or volunteers assisting in their efforts, may:

1. Disclose information regarding the citizenship or immigration status of any person unless required to do so by legal process, or such disclosure has been authorized in writing by the individual to whom such information pertains, or if such individual is a minor or is otherwise not legally competent, by such individual's parent or guardian.
2. Accept requests by Federal immigration authorities to support or assist in operations that are for only non-criminal immigration civil enforcement.
3. Permit Federal immigration authorities' access to a person unless required by law.
4. Expend Department time responding to Federal immigration authorities' inquiries or communication with immigration agents regarding a person's custody, unless required by law.
5. Respond to federal immigration authorities' inquiries or share information

about an individual with federal immigration authorities, unless required by law.

VIII. Duties of Department Officers:

- A. Any employee who believes there is or is made aware of any violation of this Ordinance shall immediately inform his/her immediate supervisor.
- B. All complaints of bias policing or discriminatory practices will be investigated in accordance with established internal affairs procedures.
- C. Each supervisor is responsible for continually monitoring and examining all officers under their direct supervision to ensure that officers' actions and activities adhere to this Ordinance and to discover any indications of bias or discriminatory practices.
- D. Traffic enforcement, detention, and search procedures will be accompanied by consistent, ongoing supervisory oversight to ensure that officers do not go beyond the parameters of reasonableness and lawfulness in conducting such activities.

IX. Complaints of Bias and/or Discrimination:

- A. The process for making a complaint shall be readily available to the public. Reasonable efforts should be made to accommodate language barriers.
- B. Any person may file a complaint with the Department if they believe they have been stopped or searched based on any alleged act of biased policing.
- C. Any person who tells a Department officer that they wish to file such a complaint shall be provided with the name of the officer's immediate supervisor. Any officer who is accused on scene of discrimination, racial profiling, an illegal stop, frisk, and/or search by any person, shall report the incident to their immediate supervisor as soon as practicable at the conclusion of the contact.
- D. Supervisors who receive official complaints shall follow Department procedures. Supervisors shall review bias/profiling accusations and complaints, formal or informal.

X. Accountability:

Failure to report any observed or known violations of this order by any officer of the Department may result in disciplinary action as outlined in the Department's General Order and as prescribed in the Town's Employment Policies.

XI. Severability Clause:

This Ordinance, or any section or provision, may not override, conflict, or supersede any State and/or Federal laws, including but not limited to, employment law (as it relates to employees of

the Town of Hanover), state law related to RSA, 91-A (the Right-to-Know Law), or freedoms of speech, religion, association, or any other individual rights.

This ordinance, or any section of provision, may not require any member of the Hanover Police Department or any employee or agent of the Town of Hanover to violate any State and/or Federal laws.

If a court of competent jurisdiction finds any provision of this Ordinance to be in conflict with any State and/or Federal laws, that Court may strike the conflicted provision from this Ordinance. However, should any section or provision of this ordinance be declared by a court of competent jurisdiction to be invalid, that decision shall not affect the validity of the ordinance as a whole or any part thereof, other than the part so declared to be invalid.

XII. Good Faith Compliance:

This ordinance, or any section or provision thereof, need not be implemented by the Town, if the Selectboard for the Town reasonably believes in good faith, that the ordinance or any section or provision thereof, conflicts with any State and/or Federal laws.

Adopted April 20, 2020

EFFECTIVE DATE

Having held a public hearing, the Selectboard voted to adopt this Ordinance on the 20th day of April, 2020, which shall be the effective date hereof.

IN WITNESS WHEREOF, a majority of the Selectboard have hereunder set their hands.

TOWN OF HANOVER
SELECTBOARD

Peter L. Christie, Chair

Athos Rassias, Vice Chair

Nancy A. Carter

William V. Geraghty

Joanna Whitcomb