

**CITY OF CHARLOTTE
OFFICE OF THE CITY ATTORNEY
Memorandum**

TO: Mayor and Council

FROM: Robert E. Hagemann, City Attorney
Mark Newbold, Police Attorney

DATE: January 13, 2016

RE: HB 318 – Identification Documents and “Sanctuary Ordinances”

As you are aware, Governor Pat McCrory signed HB 318 into law. As described in more detail below, the bill establishes restrictions on the use of certain documents for determining a person’s actual identity or residency. The bill also establishes a new statute that prohibits what the legislation characterizes as municipal “sanctuary city” ordinances.

Identification Documents

Section 11 of the bill, as amended by Section 36.3 of SB 119, establishes a new statute that reads as follows:

§ 15A-306. Consulate documents not acceptable as identification.

(a) The following documents are not acceptable for use in determining a person's actual identity or residency by a justice, judge, clerk, magistrate, law enforcement officer, or other government official:

- (1) A matricula consular or other similar document, other than a valid passport, issued by a consulate or embassy of another country.
- (2) An identity document issued or created by any person, organization, county, city, or other local authority, except where expressly authorized to be used for this purpose by the General Assembly.

(b) No local government or law enforcement agency may establish, by policy or ordinance, the acceptability of any of the documents described in subsection (a) of this section as a form of identification to be used to determine the identity or residency of any person. Any local government policy or ordinance that contradicts this section is hereby repealed.

(c) Notwithstanding subsection (a) of this section, documents described in subdivision (2) of subsection (a) of this section may be used by a law enforcement officer to assist in determining the identity or residency of a person when they are the only documents providing an indication of identity or residency available to the law enforcement officer at the time.

Since there are no current Council-approved policies or ordinances that provides for the recognition of the documents listed in the statute for determining a person’s actual identity or residency, no action is required. This new statute will, however, have to be taken into consideration if and when future policy proposals are considered.

Prohibition of “Sanctuary Ordinances”

Section 15 of the bill establishes new county and city statutes. The city statute reads as follows:

§ 160A-499.4. Adoption of sanctuary ordinances prohibited.

(a) No city may have in effect any policy, ordinance, or procedure that limits or restricts the enforcement of federal immigration laws to less than the full extent permitted by federal law.

(b) No city shall do any of the following related to information regarding the citizenship or immigration status, lawful or unlawful, of any individual:

- (1) Prohibit law enforcement officials or agencies from gathering such information.
- (2) Direct law enforcement officials or agencies not to gather such information.
- (3) Prohibit the communication of such information to federal law enforcement agencies.

As a preliminary matter, we note that the City has never claimed to be a “sanctuary city” and the term has no clearly defined legal meaning. That said, it is our opinion that Section 2.E.3. of the attached Charlotte City Council Resolution on the Protection of Civil Liberties adopted by Council on June 8, 2015 has been preempted and is no longer operative. Section 2.E. reads as follows:

- E. Immigration enforcement:
1. Arbitrary Profiling related to a person’s citizenship or immigration status shall not be a motivating factor for any police activity.
 2. Suspicion that a person is undocumented shall not alone be the basis for contact, detention, or arrest.
 3. Officers shall not question any person regarding his or her citizenship or immigration status unless there is Reasonable Suspicion, supported by objective and clearly defined evidence, that the person is involved in criminal street gang activity or terrorism related activities.

It is clear to us that G.S. 160A-499.4(b)(1) and (2), which preempts municipal policies that prohibit law enforcement from gathering information regarding citizenship or immigration status or direct officers not to do so, preempts Section 2.E.3. We do not, however, believe that the new statute has any effect on Section 2.E.1. or 2.E.2.

It is our further opinion that the reference to “citizenship” in Section 3.C. of the Resolution has also been preempted and is no longer operative (the remainder of Section 3.C. remains operative). This is due to the fact that Section 3.C. is a limitation on the gathering of information, the target of G.S. 160A-499.4(b). Section 3.C. reads as follows:

C. CMPD shall not collect, document or retain information on persons associated with a Lawful Assembly/Passive Protests based on that individual’s race, gender, ethnicity, religion, age, citizenship, sexual orientation, gender identity, or other Arbitrary Stereotype, or that individual’s support for unpopular causes protected by the First Amendment.

Given the preemptive nature of the new statute, it is not legally necessary for the Council to take formal action. Staff will instead take steps to remove from and/or make appropriate notations regarding the preempted language in published versions of the Resolution going forward.

Finally, based upon the advice provided in this memo, CMPD has reviewed its policies and directives and made conforming changes. In addition, CMPD officers are being informed and trained regarding these new State law limitations.

Attachment

cc: Ron Carlee, City Manager
Kerr Putney, Chief of Police
Willie Ratchford, Community Relations Committee