

WELCOMING HARTFORD ORDINANCE

Presentation for Warrant Night
Town of Hartford – 01/13/2020
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INTRODUCTORY REMARKS

- Not here as an attorney to give advice.
- Not here to argue for passing or rejecting the Welcoming Hartford Ordinance.
- HERE because I have found the lack of civility and respect in this debate unconscionable
- HERE to do the best job I can to explain the pros and cons of the Ordinance as I understand them.

And to ask you to bear in mind that no one has a lock on the absolute nature of this issue.

**A PART OF THE TRUTH LIES
WITHIN EACH OF US.**

DEFINITIONS

- **Fair & Impartial Policing Policy (FIPP)**
 - State of Vermont policy adopted by Town in 2017 and approved by the Police Chief on 04/23/18
- **Proposed Welcoming Hartford Ordinance (PWHO)**
 - Ordinance before the voters that was based on Chicago's Welcoming Cities Ordinance
 - drafted by a workgroup on July 23
 - Does not include a Savings Clause
 - Does not comply with 8 U.S.C. Sec.1373

DEFINITIONS, cont.

- **8 U.S.C. Sec. 1373 (“1373”)**
 - Current provision of federal law that prohibits any state or municipality (e.g. Town of Hartford), from limiting communication of **information regarding citizen or immigration status** between their agencies/agents and federal immigration authorities.
 - NOTE – struck down in certain federal circuits as unconstitutional. NOT struck down in VT circuit.

8 U.S.C. Sec. 1373

Communication between government agencies & the INS

- (a) **In general.** 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, the Immigration and [Naturalization Service](#) information regarding the citizenship or immigration status, lawful or unlawful, of any individual.
- (b) **Additional authority of government entities.** Notwithstanding any other provision of Federal, [State](#), or local law, no [person](#) or agency may prohibit, or in any way restrict, a Federal, [State](#), or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:
 - (1) Sending such information to, or requesting or receiving such information from, the Immigration and [Naturalization Service](#).
 - (2) Maintaining such information.
 - (3) Exchanging such information with any other Federal, [State](#), or local government entity.

8 U.S.C. Sec. 1373, cont.

- (c) **Obligation to respond to inquiries.** The Immigration and [Naturalization Service](#) shall respond to an inquiry by a Federal, [State](#), or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.

([Pub. L. 104–208, div. C, title VI, § 642](#), Sept. 30, 1996, [110 Stat. 3009–707](#).)

8 U.S.C. Sec. 1644.

Communication between State and local government agencies and Immigration and Naturalization Service

- Notwithstanding any other provision of Federal, [State](#), or local law, no [State](#) or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of an alien in the United [States](#). ([Pub. L. 104-193, title IV, § 434](#), Aug. 22, 1996, [110 Stat. 2275](#).)

DEFINITIONS, final . . .

- **Savings Clause** – A provision, **not included in the PWHO** but used in other similar ordinances in other localities, which makes it clear that the above-mentioned communication is permitted by the Ordinance, making it Sec. 1373-compliant.

HOW DID WE GET TO TODAY?

- 06/04/19** Selectboard Meeting at which FIPP amendments introduced
- 06/18/19** Selectboard meeting at which FIPP amendment discussed further
- 07/11/19** Workgroup meeting – no resolution
- 07/16/19** Selectboard meeting w/Chief Kasten
- 07/18/19** Expanded workgroup moves from FIPP amendments to Ordinance

HOW DID WE GET TO TODAY, cont.

- 07/23/19** New workgroup + counsel drafts PWHO with no savings clause
- 07/27/19** Smaller workgroup + counsel adds savings clause
- 07/30/19** Selectboard meeting at HHS auditorium
- 08/2019** Revisions continue
- 09/03/19** Selectboard decides to put question on the ballot without the savings clause

INTERPRETATIONS

Differing Views:

- Sec. 1373 is an example of unconstitutional overreach by the federal government
 - **Tenth Amendment** to U.S. Constitution was added to more clearly define the balance of power between the federal government and the states.
 - **Tenth Amendment** says that the federal government has only those powers specifically granted by the Constitution.

INTERPRETATIONS, cont.

ONE THREAD OF ANALYSIS:

U.S. Constitution does not authorize the federal government to take the action outlined in Sec. 1373.

And yet, it exists in law.

How do we reconcile this apparent inconsistency?

Do we proceed as if it does not exist?

To RECAP . . .

As we learned above:

- **Sec. 1373** says that agents of a town and/or state cannot prohibit or limit the sharing of “information regarding citizenship or immigration status” with immigration officials.
- This law is still on the books

CONCERNS ABOUT Sec. 1373

- PWHO as written is in violation of Sec. 1373.
- Legal opinions have been sought
None could say exactly what consequences would ensue, only what they **MIGHT** be.
- A police officer would be violating federal law if s/he complied with PWHO restrictions.
 - Does that create a hostile work environment and create liability for the town?

CONCERNS ABOUT Sec. 1373, cont.

- Federal grant applications require that a town or other applicant check a box verifying that the applying entity is in full compliance with federal law.
- Over the past six years, the Town of Hartford has applied for various amounts of federal funding, ranging from approximately \$640,000 to \$3.2 million in a given year.
 - No box check, no grant.

5-Year History of Federal Funds – Town Tax Equivalent

| <u>Fiscal Year</u> | <u>Federal \$</u> | <u>Tax Rate</u> | <u>Annual Cost per \$250,000 Property</u> | <u>Annual Cost per \$300,000 Property</u> |
|--------------------|-------------------|-----------------|---|---|
| FY14 | 3,208,005 | \$0.2007 | \$501.76 | \$602.11 |
| FY15 | 711,980 | \$0.0538 | \$134.44 | \$161.33 |
| FY16 | 637,793 | \$0.0479 | \$119.82 | \$143.78 |
| FY17 | 1,389,473 | \$0.1039 | \$259.73 | \$311.68 |
| FY18 | 1,942,662 | \$0.1459 | \$364.80 | \$437.76 |
| FY19 | 736,718 | \$0.0542 | <u>\$135.50</u> | <u>\$162.60</u> |
| <i>Average</i> | <i>1,437,772</i> | <i>\$0.10</i> | <i>\$252.68</i> | <i>\$303.21</i> |

Current Federal Funding Examples: Sykes Mountain Ave. Area Transportation Projects

| | <u>FHWA/VTran</u> | Tax Rate ¢ @ 2020 | Annual Cost per \$250,000 <u>Property</u> | Annual Cost per \$300,000 <u>Property</u> |
|--------------------------------------|-------------------|----------------------|--|--|
| <u>Construction Projects</u> | <u>ns \$</u> | <u>Grand List</u> | | |
| Upper Sykes Bike/Ped | \$663,565 | \$0.05 | \$117.53 | \$141.04 |
| Sykes Roundabouts | \$3,546,554 | \$0.25 | \$628.19 | \$753.82 |
| Rt. 5 Bike/Ped (N. Hartland Rd.) | \$275,000 | \$0.02 | \$48.71 | \$58.45 |
| Rt. 5 Bike/Ped (I-91 Interchange) | \$369,900 | \$0.03 | <u>\$65.52</u> | <u>\$78.62</u> |
| | | | <u>\$859.95</u> | <u>\$1,031.94</u> |

CONCERNS ABOUT Sec. 1373, cont.

- With the PWHO in place, a town employee is potentially in the position of having to either lie on the application OR forego the granting opportunity.
 - Could that create a hostile work environment and create liability for the town?