



**City of Kingston**  
**Report to Administrative Policies Committee**  
**Report Number AP-17-038**

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**To:** Mayor and Members of Council  
**From:** Lanie Hurdle, Commissioner, Community Services  
**Resource Staff:** Cheryl Hitchen, Social Policy & Strategic Community  
Development Manager  
Sheldon Laidman, Director, Housing & Social Services  
**Date of Meeting:** November 9, 2017  
**Subject:** Access Without Fear Policy

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**Executive Summary:**

City Council passed a motion in September 2017 directing staff “to report back before the end of 2017 with a report outlining all potential City of Kingston service and budgetary implications of becoming a community which provides access without fear.”

Staff are presenting the information requested by Council and are also recommending that Council endorse an “Access without Fear” Policy for the City of Kingston.

**Recommendation:**

**That** the Administrative Policies Committee recommend that City Council approve the “Access without Fear” Policy, attached as Exhibit B to Report Number AP-17-038.

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**Authorizing Signatures:**

ORIGINAL SIGNED BY COMMISSIONER

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**Lanie Hurdle, Commissioner, Community Services**

ORIGINAL SIGNED BY CHIEF ADMINISTRATIVE OFFICER

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**Gerard Hunt, Chief Administrative Officer**

**Consultation with the following Members of the Corporate Management Team:**

Desirée Kennedy, Chief Financial Officer & City Treasurer	Not required
Denis Leger, Commissioner, Corporate & Emergency Services	Not required
Mark Van Buren, Acting Commissioner, Transportation & Infrastructure Services	Not required

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**Options/Discussion:****Background**

Sanctuary Cities and the Access without Fear movements are spreading across North America and ask that policies and practices be put in place to ensure that all newcomers, regardless of their immigration status, have meaningful access to municipal programs and services. It also ensures that staff does not directly or indirectly collect or share information about immigration status unless required by law.

In order to provide background information on this issue, provide answers to many questions and clarify many of the “myths” about undocumented individuals, attached as Exhibit A is an “Access without Fear: Frequently Asked Questions” document that was written by Karl Flecker, Immigrant Employment Specialist with the KEYS Job Centre.

On September 19, 2017, City Council passed the following motion:

**Whereas** the City of Kingston strives to be an open, welcoming and caring community; and

**Whereas** the City supports safe, orderly and managed migration pathways and seeks to attract newcomers from around the world through the existing federal immigration system; and

**Whereas** there are situations where for a variety of reasons a resident’s immigration status may be in flux for a period of time; and

**Whereas** the City of Kingston provides fundamental social and emergency services that all residents depend on; and

**Whereas** school boards are required to provide schooling to children with irregular status as per the Ontario Education Act and human rights obligations; and

**Whereas** an “access without fear” policy is meant to officially establish meaningful access to municipal services for Kingston residents without being asked about current immigration status, nor being reported due to status-related issues (unless required by law); and

**Whereas** it is important to understand the potential benefits and costs of a local access without fear policy prior to adoption;

**Therefore Be It Resolved That** Council direct staff to report back before the end of 2017 with a report outlining all potential City of Kingston service and budgetary implications of becoming a community which provides access without fear.

**Access without Fear Policy**

At that same meeting in September, a petition in regards to Sanctuary Cities and Access without Fear was presented to Council. This petition requested that three provisions be included in an Access without Fear policy. They were:

- Municipal services be accessible to all residents regardless of their immigration status;
- City staff delivering municipal services prioritize dignity by not directly or indirectly inquiring about, nor keeping records pertaining to, a person’s immigration status; and

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- City staff will not share information about a resident's immigration status with police or the Canada Border Services Agency.

**Programs and Service Implications**

Following Council's motion, staff collected information from across the Corporation to identify which departments were asking about immigration status and if they were required to do so by any legislation.

The only department that requires immigration status documentation is Housing & Social Services. This information is collected due to provincial legislation in order for those residents to be eligible for Ontario Works benefits and Social Housing. The Ontario Works Act, implemented through Ontario Regulation 134/98, requires that status in Canada be confirmed by Ontario Works staff prior to an application being considered complete. The Housing Services Act, implemented through Ontario Regulation 367/11, also requires that status in Canada be confirmed prior to an application for Rent-Geared-to-Income (RGI) housing to be considered complete. Essentially, only Canadian citizens, permanent residents and certain refugee claimants are eligible to receive either Ontario Works assistance or RGI assistance in social housing.

The Housing & Social Services Department also administers the child care fee subsidy program. For child care fee subsidies, applicants are required by the Early Years Act to provide identification for each family member that could be in the form of immigration documentation. The Early Years Act also requires applicants to provide a current Notice of Assessment (NOA) to verify their income. For newcomers who were not living in Canada in the previous tax year (and therefore cannot provide an NOA), they must provide verification of their arrival date in Canada. These newcomers are eligible to receive child care subsidy during that first year until they are able to provide Canadian income verification.

Current City operating policy is that temporary residents (including those on student and work visas) are not eligible for subsidized child care spaces. This is a consistent policy across the Province, including municipalities that have declared themselves as sanctuary cities. City staff are clarifying with the Province what the legislative and provincial policy guidelines are with respect to temporary residents accessing child care fee subsidies. If not a provincial policy that must be adhered to by Service Managers, staff will amend the operating policy to allow temporary residents to access child care fee subsidies; therefore eliminating the need to enquire about an applicant's immigration status. Staff anticipate a report being provided to Council in early 2018 regarding program and policy changes to address increased child care fee subsidy funding from senior government where the outcome of this provincial policy review will be reported on.

The Municipal Fee Assistance Program ("My Kingston") is a municipal program administered by the Housing & Social Services Department and therefore falls under no specific provincial or federal legislation. As in child care, identification is required to access this program and immigration documentation can be used by the applicant for this purpose but are not requested nor are they necessary. This program also requires income verification, but newcomers can

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receive assistance in the first year without provision of any income documentation. In these cases, applicants just need to show proof of residency in Kingston.

There are no other municipal services provided to residents that require information or verification of immigration status. No departments, including Housing & Social Services, are reporting to any other agency or authority when they encounter undocumented residents. It should be noted that the City is aware of services that are funded by the City of Kingston, but not operated by the City of Kingston, where status in Canada data may be collected for social planning purposes or required of a provincial or federal agency. An example of this is that all Homelessness Service System agencies in Kingston use the Homeless Individuals and Families Information System (HIFIS). HIFIS is a national homeless database and software system developed and maintained by the federal government to be able to properly track the extent of homelessness in Canada. Information fields are present in this software related to status in Canada but this information is never used to determine eligibility for any homeless services in Kingston.

**Training**

Training on this policy will be incorporated into training modules and tools. Human Resources is currently working with Immigrant Services Kingston and Area (ISKA) to review and augment existing training for City staff to provide better customer service, remove barriers and promote inclusion.

**Existing Policy/By-Law:**

Not applicable

**Notice Provisions:**

Not applicable

**Accessibility Considerations:**

Not applicable

**Financial Considerations:**

There are no known financial implications for the city approving an Access without Fear policy. Extending child care subsidy funding to income eligible households temporarily in Canada through either student or work visas will result in child care subsidy funding used to support these families. However, based on the cost sharing agreement for this funding with the Provincial government, this will not result in any financial impact on the city's budget.

**Contacts:**

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Cheryl Hitchen, Social Policy & Strategic Community Development Manager 613-546-2695 extension 4806

Sheldon Laidman, Director, Housing and Social Services 613-546-2695 extension 4957

**Other City of Kingston Staff Consulted:**

Not applicable

**Others External Individuals Consulted:**

Ruth Noordegraaf, Manager, Immigrant Services, Kingston Community Health Centre

Madeleine Nerenberg, Program Manager, KEYS Job Centre

Karl Flecker, Project Manager, KEYS Job Centre

Reena Kukreja, Solidarity Kingston

Sayyida Jaffer, Solidarity Kingston

**Exhibits Attached:**

Exhibit A Access without Fear – Frequently Asked Questions

Exhibit B Access without Fear Draft Policy

## Access without Fear: Frequently Asked Questions

### What is the movement for a Sanctuary City: Access without fear all about?

Sanctuary Cities represent a movement of concerned citizens and local governments declaring that their city genuinely welcomes **all** newcomers --be they refugees, permanent residents or persons with irregular or undocumented status. Sanctuary Cities adopt policies & practices to ensure all residents, regardless of immigration status, have access to municipal services.

These policies guarantee that service providers and City staff will not collect nor share information about immigration status, unless required by law. This is commonly referred to as the practice of Don't Ask/Don't tell.

### What does irregular or undocumented status mean?

A person that does not have an official document granting them the right to be in Canada is considered to be undocumented. Interchangeable terms include, non-status or irregular. Sometimes the term 'illegal' is used but this is an incorrect term --human beings cannot be illegal. Illegality refers to an *act*, not a person.

Undocumented is a more precise term: This means an individual cannot produce an official immigration document. There can be various reasons for this situation, it cannot be assumed that any law has been broken.

### Where else are Sanctuary Cities happening?

More than 300 local governments throughout North America have declared themselves Sanctuary Cities. Canadian cities including Toronto, Hamilton and London have taken steps to allow all residents despite immigration status equitable access to municipal services without fear of being reported or deported by immigration authorities.

### How do people become undocumented?

Ironically the vast majority of undocumented persons enter Canada with proper and legally recognized documentation. However, due to circumstances often out of their control, some people slip into an undocumented status position. For example, Live-in-Caregivers arrive with valid work permits but are sometimes subjected to workplace abuses, exploitation and even be trafficked (sold from one employer to another) resulting in work permits which are tied to a specific employer, becoming void. Contacting authorities means caregiver are put at risk of deportation, even though they have committed no crime. This is structural problem with how the program is managed. Faith and community groups across Canada have documented numerous cases where employer abuse has created undocumented situations.

Some individuals overstay their visitor permit because they are unable to return to their home countries without facing death threats due to civil war or domestic abuse, or persecution for pro-democracy or political activities. Applying for refugee status or humanitarian and compassionate consideration is a very lengthy and costly process leaving other individuals in an undocumented situation.

It is extremely rare for anyone to enter Canada without first arriving with some valid documentation.

## Access without Fear: Frequently Asked Questions

### Main reasons contributing to un-documentation

#### a) *Domestic policy: Rapidly expanded Temporary Foreign Worker Program (TFWP)*

Canada's TFWP was massively expanded without safeguards to prevent exploitation and abuse of these migrant workers. In 2010, 70,000 work permits had been given to employers. By 2015 employers received more than 630,000 temporary work permits. Migrant workers face many workplace and/or labour broker abuses and forms of exploitation. Further, in 2010 the federal government arbitrarily limited these workers to a 48 month stay. Unable to earn a fair income and facing an imposed time limit some migrants were forced into an undocumented status in an effort to recoup income losses.

#### b) *Restrictive immigration policy choices*

Successive federal governments have chosen temporary and restrictive immigration policies that deny or delay newcomers from securing permanent residence or citizenship status. In 2006 the Canadian government chose to increase temporary migration program rather than investing in permanent immigration policies. By 2010 temporary migration intake exceeded permanent immigration numbers.

Since 2012, **111** changes were made to immigration policy in contrast, **19** changes occurred from 1867 to 2001. In that same year the federal government **closed 19** Citizenship and Immigration Canada (CIC) offices across the country. The remaining offices no longer provide front desk or walk-in services. Canada's Auditor General found higher error rates in immigration processing *and serious backlogs* because of too few staff

#### c) *The global migration crisis*

More than 65 million people have been forced to leave their homes due to war, persecution, coastal climate change or civil unrest. Countries around the world have failed to adequately respond to this crisis with a comprehensive refugee or asylum programs. At the same time, national governments are not constructively countering the forces that force people to migrant for necessity rather than by choice. Desperate people will take their chances fleeing their homes when their lives and their families' lives are put in danger.

### Is there a relationship between racism, anti-immigration animus and a Sanctuary City Policy?

Yes, since the 1970s Canada shifted its immigration policy to welcome people from all over the world rather than primarily immigrants from Britain, France or other European countries. Today's more than 80% of newcomers originate in countries within Asia, Africa, South or Central America. These are predominantly racialized regions of the world. Simply put, today most newcomers to Canada are people of colour who arrive via legally recognized pathways. As noted above, people become undocumented due to anti-immigration policies, funding cutbacks and backlogs in the system. Given that most immigrants originate from racialized countries; people of colour are more likely to be found amongst the undocumented. Scapegoating these individuals or preventing access to municipal services is a form of systemic racism.



## Access without Fear: Frequently Asked Questions

### Are undocumented persons breaking the law?

It is NOT a *criminal* offense to overstay your visa. There is nothing in the Criminal Code of Canada relating to migration. Having an expired immigration permit is an *administrative* offense not unlike failure to pay a parking ticket.

Municipal and provincial laws are not the same as federal laws. Although immigration status is a federal issue, municipalities have an obligation to provide access to **essential** services for all residents of their communities.

### Are Sanctuary cities in violation with federal legislation?

No. Sanctuary Cities simply ensure that all residents of their community can have equitable access to local services without fear that immigration status might deny dignity and equitable opportunities.

Sanctuary Cities acknowledge the mandate of the federal government in immigration and enforcement policies and simply ensures that front line practices of city staff and service providers are conducted in accordance within existing legal requirements.

Sanctuary Cities ensure that municipal staff and the general public understand the role and responsibilities cities have in welcoming all residents to our community so that our we can all fully benefit.

### What actually happens to people who are arrested or detained if they considered to be undocumented or have irregular status?

Undocumented persons are detained at immigration holding facilities which are jails. Canada is one of the only Western countries without a limit on immigration detention pending deportation. The UNHCR has condemned this practice as **arbitrary** and recommends a period of detention between 90 and no more than 180 days. Migrants and their children have been held in maximum security provincial jails, some for up to 10 years, without charge.

Since 2000, at least 15 people have died in immigration detention (8 in Ontario provincial prisons). Seven of the 15 deaths are unknown, because CBSA refuses to release the identity or cause of death of detainees who die in custody.

### Should city staff report their suspicions that a person might be undocumented?

No, legal scholars from the University of Toronto and lawyers with expertise with the Police Services Act, immigration and human rights law have studied this issue and found that it is both legal and recommended that city staff **not ask nor disclose** (also known as don't ask/don't tell) immigration status to federal officials, unless specifically required to do so under a warrant issued under the Immigration and Protection Act.

Immigration law is complex and it is the responsibility of trained immigration officers to carry out its provisions and regulations.

## Access without Fear: Frequently Asked Questions

### Are there human rights or international obligations that Canadian communities must consider with the Sanctuary City initiative?

Yes, the Canadian Charter of Rights and the Ontario Human Rights Code establish that individuals must not be subject to “adverse effect discrimination”. This means if a person or group of persons suffers an adverse affect, such as unequal access to police services due to fear of deportation, this can be discriminatory. Undocumented persons that witness or are victims of crimes like domestic abuse, theft, workplace exploitation, have unequal access to police services in the absence of a comprehensive and well understood ‘Don’t Ask/Don’t Tell’ policy. Further, disclosing immigration status can endanger a person’s right to life and security - a protected right under Section 7 by our Charter specifically in situations when an undocumented person cannot access police protection due to fear of deportation. Equality rights under Section 1 of the Charter can also be jeopardized without comprehensive don’t ask/don’t tell policies.

Canada is a signatory to *The International Covenant on Civil and Political Rights* (it is modelled on our Charter); *The Convention of the Elimination of all Forms of Racial Discrimination* and *The Convention on the Rights of the Child*. These instruments, which are binding on Canada, all support the full implementation of Don’t Ask/Don’t Tell policies of Sanctuary City initiative.

### Is this declaration really necessary?

Yes. Currently city staff without intending to do harm have been known to ask residents about their immigration status before some services are accessed. Staff can do this by asking for a driver’s license or photo id for example, without realizing this request can be a barrier. This initiative will provide basic education to all city staff to ensure city services are accessible and to explain why the policy prohibition for information that can disclose immigration status is important. Inquiries about immigration status are limited to very specific and legal required circumstances. Even in these unique cases, sharing or maintaining a record of this information must be limited to legally recognized parameters.

### What will this cost the city?

This is likely to be a nominal cost to the city and at minimum would involve training costs for city staff responsible for interacting with residents to understand the policy and to ensure procedures adhere to a don’t ask/don’t tell protocol.

### Won’t this policy encourage people to ‘jump the line’ vs using regular immigration pathways?

No immigration system is perfect. The current global migration crisis, anti-immigration policies advanced in the US and flaws within our own immigration system will always mean that some people fall between the cracks. No one wants to be in an undocumented situation and navigating back to a documented or regular status is time consuming, costly and extremely stressful. Most individuals do not become undocumented by choice, rather by necessity.

Many local ethno-cultural organizations, like the Chinese Canadian Association, the Islamic Society, Kingston Latino, among others, that represent established newcomers have endorsed this initiative. This strong show of support signals that many establish newcomers recognize that irregular migration is a reality that needs to be addressed.

## **Draft Access without Fear Policy**

Policy Number: TBD

Effective Date: TBD

Status: Draft

Final Approval: Council

### 1.0 Purpose

The purpose of this policy is to ensure that all residents have access to municipal services regardless of immigration status.

### 2.0 Persons Affected

This policy applies to all employees and volunteers.

### 3.0 Policy Statement

It is the policy of the city to ensure that:

3.1 All residents will have meaningful access to city services without fear and are treated with dignity and respect;

3.2 Enquiries about a person's immigration status will only be made when legally required to do so to access specific services provided by the City;

3.3 No reporting of a resident's immigration status will be made to the Canada Border Services or Police; and

3.4 Any records of a resident's immigration status will only be kept in an anonymous and confidential format; and only in circumstances where record keeping is required by law for specific programs.

### 4.0 Responsibilities

4.1 CMT members are collectively and individually responsible for directing compliance with this policy;

4.2 Supervisors/Managers/Directors are responsible for ensuring staff are aware and compliant with this policy and that no other policies or procedures are developed that contravene this policy; and

4.3 Employees are responsible for providing services to all residents in a respectful and meaningful manner and not enquiring about immigration status directly or indirectly unless legally required to do so as an eligibility requirement for access to specific services.

### 5.0 Approval Authority

5.1 Legal Review: Senior Legal Council

5.2 Management Review: CMT

5.3 Final Approval: Council

### 6.0 Revision History

Not applicable

### 7.0 Appendix

Not applicable

### 8.0 Attachments

Not applicable