

[Administrative Code - Fentanyl Sales and Immigration and Customs Enforcement (ICE) Notification Requests]

Ordinance amending the Administrative Code to permit law enforcement officials to respond to a federal immigration officer's request for voluntary notification that a person will be released from local custody, for adults who have been convicted of a felony for the sale, possession for sale, or transport for sale, of Fentanyl, and been held to answer for a felony for the sale, possession for sale, or transport for sale, of Fentanyl.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in ~~*strikethrough italics Times New Roman font*~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Findings.

(a) San Francisco's persistently lethal drug overdose crisis remains the worst public health calamity the City has faced since the deadliest days of the AIDS Crisis. From January 2020 through December 2022, the Office of the Chief Medical Examiner (OCME) found that accidental drug overdoses claimed 1,985 lives in San Francisco — nearly twice the number of lives lost to COVID-19 during the same time period.

(b) The Department of Public Health's Overdose Prevention Plan has highlighted that "profound inequities exist" in our City's drug overdose crisis, and that "Black/African Americans in San Francisco are disproportionately affected, with an opioid overdose death rate that is more than five times higher than the citywide rate."

1 (c) OCME's toxicology analyses establish that Fentanyl is overwhelmingly responsible
2 for drug overdose deaths in San Francisco, accounting for 451 of the 620 fatal overdoses
3 reported in 2022 (73%); 477 of the 640 fatal overdoses reported in 2021 (75%); and 519 of
4 the 725 fatal overdoses reported in 2020 (72%).

5 (d) Street-level drug dealing drives a staggering proportion of San Francisco's fentanyl
6 supply, with the Police Department's tally of seizures from arrests of street-level drug dealers
7 in the Tenderloin Police District in 2022 reaching 65.37 kilograms of fentanyl — or more than
8 144 pounds. With just two milligrams of fentanyl estimated to be a lethal overdose for most
9 people, SFPD's drug seizure haul from street-level drug dealers in 2022 represents enough
10 fentanyl to kill every adult in California.

11 (e) Former District Attorney Chesa Boudin has estimated that a significant percentage
12 of people selling drugs in San Francisco, perhaps as many as half, are undocumented
13 immigrants.

14 (f) Existing law generally prohibits law enforcement cooperation with a federal
15 immigration officer's request for voluntary notification that an adult will be released from local
16 custody, but allows cooperation when the person has a prior conviction for a serious or violent
17 felony and a judge has held that person to answer for a serious or violent felony, meaning that
18 a judge has found sufficient evidence of that offense to require the person to stand trial. The
19 devastating lethality of fentanyl in San Francisco's street-level trade elevates the need for
20 exceptions to the prohibition on cooperation with federal immigration authorities for adults who
21 have been convicted of selling fentanyl, and held to answer for offenses involving the felony
22 sale of fentanyl, as necessary additional exceptions within the Due Process For All Ordinance.

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24 Section 2. The Administrative Code is hereby amended by revising Chapter 12I,
25 Sections 12I.1, 12I.2, and 12I.3, to read as follows:

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2 **SEC. 12I.2. DEFINITIONS.**

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4 "Convicted" means the state of having been proved guilty in a judicial proceeding,
5 unless the convictions have been expunged or vacated pursuant to applicable law. The date
6 that an individual is Convicted starts from the date of release.

7 "Fentanyl" means the Schedule II controlled substance listed in California Health and Safety
8 Code 11055(c)(8), as amended from time to time.

9 "Firearm" means a device, designed to be used as a weapon, from which is expelled
10 through a barrel, a projectile by the force of an explosion or other form of combustion as
11 defined in Penal Code Section 16520.

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13 **SEC. 12I.3. RESTRICTIONS ON LAW ENFORCEMENT OFFICIALS.**

14 (a) Except as provided in subsection (b), a law enforcement official shall not detain an
15 individual on the basis of a civil immigration detainer after that individual becomes eligible for
16 release from custody.

17 (b) Law enforcement officials may continue to detain an individual in response to a civil
18 immigration detainer for up to 48 hours after that individual becomes eligible for release if the
19 continued detention is consistent with state and federal law, and the individual meets both of
20 the following criteria:

21 (1) The individual has been Convicted of a Violent Felony in the seven years
22 immediately prior to the date of the civil immigration detainer; and

23 (2) A magistrate has determined that there is probable cause to believe the
24 individual is guilty of a Violent Felony and has ordered the individual to answer to the same
25 pursuant to Penal Code Section 872.

1 In determining whether to continue to detain an individual based solely on a civil
2 immigration detainer as permitted in this subsection (b), law enforcement officials shall
3 consider evidence of the individual's rehabilitation and evaluate whether the individual poses
4 a public safety risk. Evidence of rehabilitation or other mitigating factors to consider includes,
5 but is not limited to: the individual's ties to the community, whether the individual has been a
6 victim of any crime, the individual's contribution to the community, and the individual's
7 participation in social service or rehabilitation programs.

8 This subsection (b) shall expire by operation of law on October 1, 2016, or upon a
9 resolution passed by the Board of Supervisors that finds for purposes of this Chapter, the
10 federal government has enacted comprehensive immigration reform that diminishes the need
11 for this subsection (b), whichever comes first.

12 (c) Except as provided in subsection (d), a law enforcement official shall not respond
13 to a federal immigration officer's notification request.

14 (d) Law Enforcement officials may respond to a federal immigration officer's
15 notification request if the individual meets both of the following criteria:

16 (1) The individual either:

17 (A) has been Convicted of a Violent Felony in the seven years
18 immediately prior to the date of the notification request; or

19 (B) has been Convicted of a Serious Felony in the five years immediately
20 prior to the date of the notification request; or

21 (C) has been Convicted of three felonies identified in Penal Code
22 sections 1192.7(c) or 667.5(c), or Government Code sections 7282.5(a)(2) or 7282.5(a)(3),
23 other than domestic violence, arising out of three separate incidents in the five years
24 immediately prior to the date of the notification request; ~~and~~or
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1 (D) has been Convicted of a felony under California Health and Safety Code
2 11351 or 11352, as amended from time to time, involving the sale, possession for sale, or transport for
3 sale, of Fentanyl, in the immediate seven years prior to the date of the notification request; and

4 (2) A magistrate has determined that there is probable cause to believe the
5 individual is guilty of a felony identified in Penal Code sections 1192.7(c) or 667.5(c), or
6 Government Code sections 7282.5(a)(2) or 7282.5(a)(3), other than domestic violence, or
7 guilty of a felony for sale, possession for sale, or transport for sale, of Fentanyl, under California
8 Health and Safety Code 11351 or 11352, as amended from time to time, and has ordered the
9 individual to answer to the same pursuant to Penal Code Section 872.

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12 Section 3. Effective Date. This ordinance shall become effective 30 days after
13 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
14 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
15 of Supervisors overrides the Mayor's veto of the ordinance.

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Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the “Note” that appears under the official title of the ordinance.

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

By: /s/
JANA CLARK
Deputy City Attorney

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