

1 [Administrative Code - Due Process Ordinance on Immigration Detainers]

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3 **Ordinance amending the Administrative Code, by adding Chapter 12I, to prohibit law**
 4 **enforcement officials from detaining individuals on the basis of an immigration**
 5 **detainer after they become eligible for release from custody.**

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

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

14 Section 1. The Administrative Code is hereby amended by adding Chapter 12I,
 15 Sections 12I.1 through 12I.6, to read as follows:

16 **Chapter 12I: Immigration Detainers**

17 **SEC. 12I.1. FINDINGS.**

18 *The City and County of San Francisco (the “City”) is home to persons of diverse racial, ethnic,*
 19 *and national backgrounds, including a large immigrant population. The City respects, upholds, and*
 20 *values equal protection and equal treatment for all of our residents, regardless of immigration status.*
 21 *Fostering a relationship of trust, respect, and open communication between City employees and City*
 22 *residents is essential to the City’s core mission of ensuring public health, safety, and welfare, and*
 23 *servicing the needs of everyone in the community, including immigrants. The purpose of this Chapter is*
 24 *to foster respect between law enforcement and residents, to protect limited local resources, and to*
 25 *ensure family unity, community security, and due process for all.*

Our federal immigration system is in dire need of comprehensive reform. The federal
government should not shift the burden of federal civil immigration enforcement onto local law

1 enforcement by requesting that local law enforcement agencies continue detaining persons based on
2 non-mandatory immigration detainers. It is not a wise and effective use of valuable City resources at a
3 time when vital services are being cut.

4 The United States Immigration and Customs Enforcement's (ICE) controversial Secure
5 Communities program (also known as "S-Comm") shifts the burden of federal civil immigration
6 enforcement onto local law enforcement. S-Comm comes into operation after the state sends
7 fingerprints that state and local law enforcement agencies have transmitted to California Department
8 of Justice ("Cal DOJ") to positively identify the arrestees and to check their criminal history. The FBI
9 forwards the fingerprints to the Department of Homeland Security (DHS) to be checked against
10 immigration and other databases. To give itself time to take a detainee into immigration custody, ICE
11 sends an Immigration Detainer – Notice of Action (DHS Form I-247) to the law enforcement official
12 requesting that the law enforcement official hold the individual for up to 48 hours after that individual
13 would otherwise be released. Immigration detainers may be issued without evidentiary support or
14 probable cause by border patrol agents, aircraft pilots, special agents, deportation officers,
15 immigration inspectors, and immigration adjudication officers.

16 Given that immigration detainers are issued by immigration officers without judicial oversight,
17 and the regulation authorizing detainers provides no minimum standard of proof for their issuance,
18 there are serious questions as to their constitutionality. Unlike criminal detainers, which are supported
19 by a warrant and require probable cause, there is no requirement for a warrant and no established
20 standard of proof, such as reasonable suspicion or probable cause, for issuing an immigration detainer
21 request. At least one federal court in Indiana has ruled that because immigration detainers and other
22 ICE "Notice of Action" documents are issued without probable cause of criminal conduct, they do not
23 meet the Fourth Amendment requirements for state or local law enforcement officials to arrest and hold
24 an individual in custody.

1 On December 4, 2012, the Attorney General of California, Kamala Harris, clarified the
2 responsibilities of local law enforcement agencies under S-Comm. The Attorney General clarified that
3 S-Comm does not require state or local law enforcement officials to determine an individual’s
4 immigration status or to enforce federal immigration laws. The Attorney General also clarified that
5 immigration detainers are voluntary requests to local law enforcement agencies that do not mandate
6 compliance. California local law enforcement agencies may determine on their own whether to comply
7 with a voluntary immigration detainer. Other jurisdictions, including Berkeley, California; Richmond,
8 California; Santa Clara County, California; Washington, D.C., and Cook County, Illinois, have
9 already acknowledged the discretionary nature of immigration hold requests and are declining to hold
10 people in their jails for the additional forty-eight (48) hours requested under immigration detainers.
11 Local law enforcement responsibilities, duties, and powers are regulated by state law. However,
12 complying with voluntary immigration detainers falls outside the scope of those responsibilities and
13 frequently raises due process concerns.

14 According to Section 287.7 of Title 8 of the Code of Federal Regulations, the City is not
15 reimbursed by the federal government for the costs associated with immigration detainers alone. The
16 full cost of responding to an immigration detainer can include, but is not limited to, extended detention
17 time, the administrative costs of tracking and responding to detainers, and the legal liability for
18 erroneously holding an individual who is not subject to an immigration detainer. Compliance with
19 immigration detainers and involvement in civil immigration enforcement diverts limited local resources
20 from programs that are beneficial to the City.

21 The City seeks to protect public safety, which is founded on trust and cooperation of community
22 residents and local law enforcement. However, immigration detainers undermine community trust of
23 law enforcement by instilling fear in immigrant communities of coming forward to report crimes and
24 cooperate with local law enforcement. A 2013 study by the University of Illinois, entitled “Insecure
25 Communities: Latino Perceptions of Police Involvement in Immigration Enforcement,” found that at

1 least 40 percent of Latinos surveyed are less likely to provide information to police because they fear
2 exposing themselves, family, or friends to a risk of deportation. Indeed, immigration detainers have
3 resulted in the transfer of victims of crime, including domestic violence victims, to ICE. According to a
4 national 2011 study by the Chief Justice Earl Warren Institute on Law and Social Policy at UC
5 Berkeley, entitled “Secure Communities by the Numbers: An Analysis of Demographics and Due
6 Process” (“2011 Warren Institute Study”), ICE has falsely detained approximately 3,600 U.S. citizens
7 as a result of S-Comm. Thus, S-Comm leaves even those with legal status vulnerable to detainers
8 issued without judicial review or without proof of criminal activity, in complete disregard for the due
9 process rights of those subject to the detainers.

10 The City has enacted numerous laws and policies to strengthen communities and keep families
11 united. In contrast, ICE immigration detainers have resulted in the separation of families. According
12 to the 2011 Warren Institute Study, it is estimated that more than one-third of those targeted by S-
13 Comm have a U.S. citizen spouse or child. Complying with the immigration detainer thus results in the
14 deportation of potential aspiring U.S. citizens. According to the 2011 Warren Institute Study, Latinos
15 make up 93% of those detained through S-Comm, although they only account for 77% of the
16 undocumented population in the U.S. As a result, S-Comm has a disproportionate impact on Latinos.

17 The City has enacted numerous laws and policies to prevent its residents from becoming
18 entangled in the immigration system. But, the enforcement of immigration laws is a responsibility of
19 the federal government. A December 2012 ICE news release stated that deportations have hit record
20 figures each year. According to the Migration Policy Institute’s 2013 report, entitled “Immigration
21 Enforcement in the United States: The Rise of a Formidable Machinery,” the federal government
22 presently spends more on civil immigration enforcement than all federal criminal law enforcement
23 combined. Local funds should not be expended on such efforts, especially because such entanglement
24 undermines community policing strategies.

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

2 “Eligible for release from custody” means that the individual may be released from custody
3 because one of the following conditions has occurred:

4 (1) All criminal charges against the individual have been dropped or dismissed.

5 (2) The individual has been acquitted of all criminal charges filed against him or her.

6 (3) The individual has served all the time required for his or her sentence.

7 (4) The individual has posted a bond, or has been released on his or her own recognizance.

8 (5) The individual has been referred to pre-trial diversion services.

9 (6) The individual is otherwise eligible for release under state or local law.

10 “Immigration detainer” means a request issued by an authorized federal immigration officer
11 under Section 287.7 of Title 8 of the Code of Federal Regulations, to a local law enforcement official to
12 maintain custody of an individual for a period not to exceed forty-eight (48) hours, excluding
13 Saturdays, Sundays, and holidays, and advise the authorized federal immigration officer prior to the
14 release of that individual.

15 “Law enforcement official” means any City Department or officer or employee of a City
16 Department, authorized to enforce criminal statutes, regulations, or local ordinances; operate jails or
17 maintain custody of individuals in jails; and operate juvenile detention facilities or to maintain custody
18 of individuals in juvenile detention facilities.

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

20 A law enforcement official shall not detain an individual on the basis of an immigration
21 detainer after that individual becomes eligible for release from custody.

22 **SEC. 12I.4. PURPOSE OF THIS CHAPTER.**

23 The intent of this Chapter is to address civil immigration detainer requests. Nothing in this
24 Chapter shall be construed to apply to matters other than those relating to federal civil immigration
25 detainers. In all other respects, local law enforcement agencies may continue to collaborate with

1 federal authorities to protect public safety. This collaboration includes, but is not limited to,
2 participation in joint criminal investigations that are permitted under local policy or applicable city or
3 state law.

4 **SEC. 12I.5. SEVERABILITY.**

5 If any section, subsection, sentence, clause, phrase, or word of this Chapter 12I, or its
6 application, is for any reason held to be invalid or unconstitutional by a decision of any court of
7 competent jurisdiction, such decision shall not affect the validity of the remaining portions of this
8 Chapter 12I. The Board of Supervisors hereby declares that it would have passed this Chapter 12I and
9 each and every section, subsection, sentence, clause, phrase, and word not declared invalid or
10 unconstitutional without regard to whether any other portion of this Chapter 12I would be subsequently
11 declared invalid or unconstitutional.

12 **SEC 12I.6. UNDERTAKING FOR THE GENERAL WELFARE.**

13 In enacting and implementing this Chapter 12I, the City is assuming an undertaking only to
14 promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an
15 obligation for breach of which it is liable in money damages to any person who claims that such breach
16 proximately caused injury.

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18 Section 2. Effective Date. This ordinance shall become effective 30 days after
19 enactment.

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21 APPROVED AS TO FORM:
22 DENNIS J. HERRERA, City Attorney

23 By: _____
24 Alicia Cabrera
25 Deputy City Attorney

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