

File No. 150796 Committee Item No. 2
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS
AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight Date October 1, 2015

Board of Supervisors Meeting Date _____

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| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
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| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
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OTHER (Use back side if additional space is needed)

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Board of Supervisors Ordinance No. 378-89</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Sheriff Memo - 3/13/15</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Mayor Memo - 07/14/15</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Sheriff Memo - 07/15/15</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Referral FYI - 07/28/15</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>San Francisco Administrative Code, Chapter 12H (Copy)</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>8 USC Section, 1373</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>BOARD ORDINANCE NO. 375-89</u> |
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Completed by: Erica Major Date September 29, 2015
Completed by: _____ Date _____

1 [Confirming Support for the Sanctuary City and Due Process for All Ordinance and Urging the
2 Sheriff to Immediately Rescind His Department-Wide Gag Order]

3 **Resolution confirming the Board of Supervisors' support for the Sanctuary City and**
4 **Due Process for All Ordinance; and urging the Sheriff to immediately rescind his**
5 **department-wide gag order.**

6
7 WHEREAS, On October 24, 1989, by Ordinance No. 375-89, the City and County of
8 San Francisco became a City and County of Refuge, and where the ordinance is also known
9 and referred to as San Francisco's "Sanctuary City policy;" and

10 WHEREAS, San Francisco and the United States were built and enriched by
11 immigrants from around the world, and immigrants continue to be a great source of innovation
12 and strength for our City and nation; and

13 WHEREAS, Over 320 jurisdictions throughout the United States have versions of
14 Sanctuary City policies in place to enhance and promote public safety in their respective
15 communities; and

16 WHEREAS, San Francisco's Sanctuary City policy has improved public safety citywide
17 by building trust between immigrant communities and local law enforcement, and has been
18 endorsed as a public safety best practice by the International Association Chiefs of Police;
19 and

20 WHEREAS, Our Sanctuary City policy does not and was never intended to serve as a
21 shield for criminal behavior in our communities; and

22 WHEREAS, Section 12H.2-1 of the City's Sanctuary City policy states, "Nothing in this
23 Chapter shall prohibit, or be construed as prohibiting, a Law Enforcement Officer from
24 identifying and reporting any adult pursuant to State or Federal Law or regulation who is in
25

1 custody after being booked for the alleged commission of a felony and is suspected of
2 violating the civil provisions of the immigration laws;" and

3 WHEREAS, Section 12H.2-1 of the City's Sanctuary City policy further states that,
4 "Nothing in the Chapter shall preclude any City and County Department, agency, commission,
5 officer, or employee from (a) reporting information to the Federal agency charged with
6 enforcement of the Federal immigration law regarding an individual who has been booked at
7 any county jail facility, and who has previously been convicted of a felony committed in
8 violation of the laws of the State of California, which is still considered a felony under state
9 law; (b) cooperating with a request from the Federal agency charged with enforcement of the
10 Federal immigration law for information regarding an individual who has been convicted of a
11 felony committed in violation of the laws of the State of California, which is still considered a
12 felony under State law;" and

13 WHEREAS, United States Code, Title 8, Chapter 12, Subchapter II, Part IX, 1373 (a)
14 states that, "Notwithstanding any other provision of Federal, State, or local law, a Federal,
15 State, or local government entity or official may not prohibit, or in any way restrict, any
16 government entity or official from sending to, or receiving from, the Immigration and
17 Naturalization Service information regarding the citizenship or immigration status, lawful or
18 unlawful, of any individual;" and

19 WHEREAS, On March 13, 2015, the Sheriff issued a department-wide memo ordering
20 his department to cease communications with any federal immigration authorities except in
21 very limited circumstances; and

22 WHEREAS, This Sheriff's Department memo contradicts both federal law and the
23 City's Sanctuary City policy, and does not prioritize public safety for San Francisco; and
24
25

1 WHEREAS, On July 15, 2015, Sheriff Ross Mirkarimi issued a letter to Mayor Edwin
2 Lee and the San Francisco Board of Supervisors requesting “legislative direction” on San
3 Francisco’s immigration policy; now, therefore, be it

4 RESOLVED, That the San Francisco Board of Supervisors fully supports both the
5 City’s Sanctuary City policy and Due Process for All Ordinance because both policies are in
6 the best interest of public safety and respect the basic rights affirmed to all by the Constitution
7 of the United States; and, be it

8 FURTHER RESOLVED, That the San Francisco Board of Supervisors requests that
9 the Sheriff abide by San Francisco’s Sanctuary City policy and federal law, and immediately
10 rescind his March 13, 2015, memo ceasing communications with federal immigration
11 authorities.



CITY & COUNTY OF SAN FRANCISCO

San Francisco Administrative Code Chapter 12H: Immigration Status

Sec. 12H.1. City and County of Refuge.

Sec. 12H.2. Use of City Funds Prohibited.

Sec. 12H.2-1. Chapter Provisions Inapplicable to Persons Convicted of Certain Crimes.

Sec. 12H.3. Clerk of Board to Transmit Copies of This Chapter; Informing City Employees.

Sec. 12H.4. Enforcement.

Sec. 12H.5. City Undertaking Limited to Promotion of General Welfare.

Sec. 12H.6. Severability.

SEC. 12H.1. CITY AND COUNTY OF REFUGE.

It is hereby affirmed that the City and County of San Francisco is a City and County of Refuge.

(Added by Ord. 375-89, App. 10/24/89)

(return to top)

SEC. 12H.2. USE OF CITY FUNDS PROHIBITED.

No department, agency, commission, officer or employee of the City and County of San Francisco shall use any City funds or resources to assist in the enforcement of federal immigration law or to gather or disseminate information regarding the immigration status of individuals in the City and County of San Francisco unless such assistance is required by federal or State statute, regulation or court decision. The prohibition set forth in this Chapter shall include, but shall not be limited to:

(a) Assisting or cooperating, in one's official capacity, with any Immigration and Naturalization Service (INS) investigation, detention, or arrest procedures, public or clandestine, relating to alleged violations of the civil provisions of the federal immigration law.

(b) Assisting or cooperating, in one's official capacity, with any investigation, surveillance or gathering of information conducted by foreign governments, except for cooperation related to an alleged violation of City and County, State or federal criminal laws.

(c) Requesting information about, or disseminating information regarding, the immigration status of any individual, or conditioning the provision of services or benefits by the City and County of San Francisco upon immigration status, except as required by federal or State statute or regulation, City and County public assistance criteria, or court decision.

(d) Including on any application, questionnaire or interview form used in relation to benefits, services or opportunities provided by the City and County of San Francisco any question regarding immigration status other than those required by federal or State statute, regulation or court decision. Any such questions existing or being used by the City and County at the time this Chapter is adopted shall be deleted within sixty days of the adoption of this Chapter.

(Added by Ord. 375-89, App. 10/24/89)

(return to top)

SEC. 12H.2-1. CHAPTER PROVISIONS INAPPLICABLE TO PERSONS CONVICTED OF CERTAIN CRIMES.

Nothing in this Chapter shall prohibit, or be construed as prohibiting, a law enforcement officer from identifying and reporting any person pursuant to State or federal law or regulation who is in custody after being booked for the alleged commission of a felony and is suspected of violating the civil provisions of the immigration laws. In addition, nothing in this Chapter shall preclude any City and County department, agency, commission, officer or employee from (a) reporting information to the INS regarding an individual who has been booked at any county jail facility, and who has previously been convicted of a felony committed in violation of the laws of the State of California, which is still considered a felony under State law; (b) cooperating with an INS request for information regarding an individual who has been convicted of a felony committed in violation of the laws of the State of California, which is still considered a felony under state law; or (c) reporting information as required by federal or state statute, regulation or court decision, regarding an individual who has been convicted of a felony committed in violation of the laws of the State of California, which is still considered a felony under state law. For purposes of this Section, an individual has been "convicted" of a felony when: (a) there has been a conviction by a court of competent jurisdiction; and (b) all direct appeal rights have been exhausted or waived; or (c) the appeal period has lapsed.

However, no officer, employee or law enforcement agency of the City and County of San Francisco shall stop, question, arrest or detain any individual solely because of the individual's national origin or immigration status. In addition, in deciding whether to report an individual to the INS under the circumstances described in this Section, an officer, employee or law enforcement agency of the City and County of San Francisco shall not discriminate among individuals on the basis of their ability to speak English or perceived or actual national origin.

This Section shall not apply in cases where an individual is arrested and/or convicted for failing to obey a lawful order of a police officer during a public assembly or for failing to disperse after a police officer has declared an assembly to be unlawful and has ordered dispersal.

Nothing herein shall be construed or implemented so as to discourage any person, regardless of immigration status, from reporting criminal activity to law enforcement agencies.

(Added by Ord. 282-92, App. 9/4/92; amended by Ord. 238-93, App. 8/4/93)

(return to top)

SEC. 12H.3. CLERK OF BOARD TO TRANSMIT COPIES OF THIS CHAPTER; INFORMING CITY EMPLOYEES.

The Clerk of the Board of Supervisors shall send copies of this Chapter, including any future amendments thereto that may be made, to every department, agency and commission of the City and County of San Francisco, to California's United States Senators, and to the California Congressional delegation, the Commissioner of the INS, the United States Attorney General, and the Secretary of State and the President of the United States. Each appointing officer of the City and County of San Francisco shall inform all employees under her or his jurisdiction of the prohibitions in this ordinance, the duty of all of her or his employees to comply with the prohibitions in this ordinance, and that employees who fail to comply with the prohibitions of the ordinance shall be subject to appropriate disciplinary action. Each city and county employee shall be given a written directive with instructions for implementing the provisions of this Chapter.

(Added by Ord. 375-89, App. 10/24/89)

(return to top)

Subsec. (d)(1). Pub. L. 107-56, § 416(c)(1), inserted “, other approved educational institutions,” after “higher education” in introductory provisions.

Subsec. (d)(1)(A). Pub. L. 107-56, § 416(c)(2), inserted “, or other approved educational institution,” after “higher education”.

Subsec. (d)(2). Pub. L. 107-56, § 416(c)(3), inserted “, other approved educational institution,” after “higher education”.

Subsec. (e)(1), (2). Pub. L. 107-56, § 416(c)(3), which directed insertion of “, other approved educational institution,” after “higher education” in pars. (1) and (2), could not be executed because the words “higher education” did not appear. See 2000 Amendment notes below.

Subsec. (h)(3). Pub. L. 107-56, § 416(c)(4), added par. (3). 2000—Subsec. (d)(1). Pub. L. 106-396, § 406(2), inserted “institutions of higher education or exchange visitor programs” after “by” in introductory provisions.

Subsec. (e)(1). Pub. L. 106-396, § 404(1), in introductory provisions, substituted “the Attorney General” for “an approved institution of higher education and a designated exchange visitor program” and “a time prior to the alien being classified under subparagraph (F), (J), or (M) of section 1101(a)(15) of this title.” for “the time—

“(A) when the alien first registers with the institution or program after entering the United States; or

“(B) in a case where a registration under subparagraph (A) does not exist, when the alien first commences activities in the United States with the institution or program.”

Subsec. (e)(2). Pub. L. 106-396, § 404(2), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: “An approved institution of higher education and a designated exchange visitor program shall remit the fees collected under paragraph (1) to the Attorney General pursuant to a schedule established by the Attorney General.”

Subsec. (e)(3). Pub. L. 106-396, § 404(3), substituted “alien who seeks” for “alien who has” and “who seeks to come” for “who has come”.

Subsec. (e)(4)(A). Pub. L. 106-553 inserted before period at end of second sentence “, except that, in the case of an alien admitted under section 1101(a)(15)(J) of this title as an au pair, camp counselor, or participant in a summer work travel program, the fee shall not exceed \$35” without reference to amendment made by Pub. L. 106-396, § 404(4)(A). See below.

Pub. L. 106-396, § 404(4)(A), inserted before period at end of second sentence “, except that, in the case of an alien admitted under section 1101(a)(15)(J) of this title as an au pair, camp counselor, or participant in a summer work travel program, the fee shall not exceed \$40”. See amendment note above.

Subsec. (e)(4)(B). Pub. L. 106-396, § 404(4)(B), inserted at end “Such expenses include, but are not necessarily limited to, those incurred by the Secretary of State in connection with the program under subsection (a) of this section.”

Subsec. (e)(5), (6). Pub. L. 106-396, § 404(5), added pars. (5) and (6).

Subsec. (g)(1). Pub. L. 106-396, § 405, amended heading and text of par. (1) generally. Prior to amendment, text read as follows:

“(A) IN GENERAL.—Not later than 6 months after the submission of the report required by subsection (f) of this section, the Attorney General, in consultation with the Secretary of State and the Secretary of Education, shall commence expansion of the program to cover the nationals of all countries.

“(B) DEADLINE.—Such expansion shall be completed not later than 1 year after the date of the submission of the report referred to in subsection (f) of this section.”

Subsec. (h)(2)(A). Pub. L. 106-396, § 406(1), substituted “Secretary of State” for “Director of the United States Information Agency”.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

FOREIGN STUDENT MONITORING PROGRAM

Pub. L. 107-56, title IV, § 416(a), (b), Oct. 26, 2001, 115 Stat. 354, provided that:

“(a) FULL IMPLEMENTATION AND EXPANSION OF FOREIGN STUDENT VISA MONITORING PROGRAM REQUIRED.—The Attorney General, in consultation with the Secretary of State, shall fully implement and expand the program established by section 641(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372(a)).

“(b) INTEGRATION WITH PORT OF ENTRY INFORMATION.—For each alien with respect to whom information is collected under section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372), the Attorney General, in consultation with the Secretary of State, shall include information on the date of entry and port of entry.”

§ 1373. Communication between government agencies and the Immigration and Naturalization Service

(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.

(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.)

CODIFICATION

Section was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and also as part of the Omnibus Consolidated Appropriations Act, 1997, and not as part of the Immigration and Nationality Act which comprises this chapter.

ABOLITION OF IMMIGRATION AND NATURALIZATION
SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1374. Information regarding female genital mutilation

(a) Provision of information regarding female genital mutilation

The Immigration and Naturalization Service (in cooperation with the Department of State) shall make available for all aliens who are issued immigrant or nonimmigrant visas, prior to or at the time of entry into the United States, the following information:

(1) Information on the severe harm to physical and psychological health caused by female genital mutilation which is compiled and presented in a manner which is limited to the practice itself and respectful to the cultural values of the societies in which such practice takes place.

(2) Information concerning potential legal consequences in the United States for (A) performing female genital mutilation, or (B) allowing a child under his or her care to be subjected to female genital mutilation, under criminal or child protection statutes or as a form of child abuse.

(b) Limitation

In consultation with the Secretary of State, the Commissioner of Immigration and Naturalization shall identify those countries in which female genital mutilation is commonly practiced and, to the extent practicable, limit the provision of information under subsection (a) of this section to aliens from such countries.

(c) "Female genital mutilation" defined

For purposes of this section, the term "female genital mutilation" means the removal or infibulation (or both) of the whole or part of the clitoris, the labia minora, or labia majora.

(Pub. L. 104-208, div. C, title VI, § 644, Sept. 30, 1996, 110 Stat. 3009-708.)

CODIFICATION

Section was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and also as part of the Omnibus Consolidated Appropriations Act, 1997, and not as part of the Immigration and Nationality Act which comprises this chapter.

ABOLITION OF IMMIGRATION AND NATURALIZATION
SERVICE AND TRANSFER OF FUNCTIONS

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1375. Repealed. Pub. L. 109-162, title VIII, § 833(g), Jan. 5, 2006, 119 Stat. 3077

Section, Pub. L. 104-208, div. C, title VI, § 652, Sept. 30, 1996, 110 Stat. 3009-712, related to mail-order bride business.

§ 1375a. Domestic violence information and resources for immigrants and regulation of international marriage brokers

(a) Information for K nonimmigrants on legal rights and resources for immigrant victims of domestic violence

(1) In general

The Secretary of Homeland Security, in consultation with the Attorney General and the Secretary of State, shall develop an information pamphlet, as described in paragraph (2), on legal rights and resources for immigrant victims of domestic violence and distribute and make such pamphlet available as described in paragraph (5). In preparing such materials, the Secretary of Homeland Security shall consult with nongovernmental organizations with expertise on the legal rights of immigrant victims of battery, extreme cruelty, sexual assault, and other crimes.

(2) Information pamphlet

The information pamphlet developed under paragraph (1) shall include information on the following:

(A) The K nonimmigrant visa application process and the marriage-based immigration process, including conditional residence and adjustment of status.

(B) The illegality of domestic violence, sexual assault, and child abuse in the United States and the dynamics of domestic violence.

(C) Domestic violence and sexual assault services in the United States, including the National Domestic Violence Hotline and the National Sexual Assault Hotline.

(D) The legal rights of immigrant victims of abuse and other crimes in immigration, criminal justice, family law, and other matters, including access to protection orders.

(E) The obligations of parents to provide child support for children.

(F) Marriage fraud under United States immigration laws and the penalties for committing such fraud.

(G) A warning concerning the potential use of K nonimmigrant visas by United States citizens who have a history of committing domestic violence, sexual assault, child abuse, or other crimes and an explanation that such acts may not have resulted in a criminal record for such a citizen.

(H) Notification of the requirement under subsection (d)(3)(A) of this section that international marriage brokers provide foreign national clients with background information gathered on United States clients from searches of Federal and State sex offender public registries and collected from United States clients regarding their marital history and domestic violence or other violent criminal history, but that such information may not be complete or accurate because the United States client may not have a criminal record or may not have truthfully reported their marital or criminal record.

(3) Summaries

The Secretary of Homeland Security, in consultation with the Attorney General and the

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Nicole Elliott, Mayor's Office
Greg Suhr, Chief, Police Department
Ross Mirkarimi, Sheriff, Sheriff's Department
Adrienne Pon, Executive Director, Office of Civic Engagement and
Immigrant Affairs

FROM: Erica Major, Assistant Committee Clerk, Government Audit and Oversight
Committee, Board of Supervisors

DATE: July 28, 2015

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Government Audit and Oversight Committee has received the following proposed legislation, introduced by Supervisor Farrell on July 21, 2015:

File No. 150796

Resolution confirming the Board of Supervisors support for the Sanctuary City and Due Process for All Ordinance and urging the Sheriff to immediately rescind his department-wide gag order.

If you have any comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Christine Fountain, Police Department
Katherine Gorwood, Sheriff's Department

Major, Erica (BOS)

From: Major, Erica (BOS)
Sent: Tuesday, July 28, 2015 1:39 PM
To: Wheaton, Nicole (MYR); Suhr, Greg (POL); Mirkarimi, Ross (SHF); Pon, Adrienne (ADM)
Cc: Somera, Alisa (BOS); Fountain, Christine (POL); Gorwood, Kathy
Subject: REFERRAL FYI (150796) Confirming Support for the Sanctuary City and Due Process for All Ordinance and Urging the Sheriff to Immediately Rescind His Department-Wide Gag Order
Attachments: 150796 FYI.pdf

Greetings:

This matter is being forwarded to your department for informational purposes. If you have any comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

Thank you.

Erica Major
Assistant Committee Clerk
Board of Supervisors
1 Dr. Carlton B. Goodlett Place, City Hall, Room 244
San Francisco, CA 94102
Phone: (415) 554-4441 | Fax: (415) 554-5163
Erica.Major@sfgov.org | www.sfbos.org



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FILE NO. 97-89-42

ORDINANCE NO. **375-89**

1 [Use of City Resources to Enforce Immigration Laws]
2 AMENDING THE SAN FRANCISCO ADMINISTRATIVE CODE BY ADDING CHAPTER 12H
3 THERETO, AFFIRMING SAN FRANCISCO'S STATUS AS A CITY AND COUNTY OF
4 REFUGE, AND PROHIBITING USE OF CITY AND COUNTY RESOURCES TO ASSIST
5 IN ENFORCEMENT OF FEDERAL IMMIGRATION LAWS.

6

7 Note: This entire chapter is new.

8

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

10

11 Section 1. The Board of Supervisors of the City and County of
12 San Francisco makes the following findings:

13 (a) The Board of Supervisors, in Resolution No. 1087-85,
14 declared the City and County of San Francisco as a City and County
15 of Refuge in December of 1985.

16 (b) There is a steady and dramatic increase in human
17 rights violations in El Salvador and the situation is likely to
18 continue to deteriorate with the recent assumption of power by the
19 ARENA party, which is closely linked to Salvadoran death squads.

20 (c) The government in Guatemala has been unable to extend
21 civilian control over the Guatemalan army, and extrajudicial
22 killings of indigenous leaders, labor union members, health
23 educators, students and peasants have been reported to be taking
24 place at a rate of over 150 per month in 1989.

25 (d) The people of the United States owe a particular
26 responsibility to political refugees from El Salvador and Guatemala
27 because of the role that United States military and other
28 war-related aid has played in prolonging the political conflicts in
29 those countries.

30 / / /

1 (e) Conditions in their homelands which have already
2 displaced over one third of the Salvadoran population and over half
3 a million Guatemalans continue to force Salvadorans and Guatemalans
4 to flee and seek refuge primarily because of political persecution
5 and civil war rather than economic reasons.

6 (f) Because they entered the United States after January
7 of 1982, over 80% of the Salvadorans and Guatemalans living in the
8 City and County of San Francisco were ineligible for legalization
9 under the Immigration Reform and Control Act of 1986, which now
10 imposes additional hardships on Salvadoran and Guatemalan refugees.

11 (g) The United States Supreme Court in the 1987 case
12 Immigration and Naturalization Service v. Cardosa-Fonseca noted that
13 the Immigration and Naturalization Service (INS) had been imposing
14 an unlawfully restrictive standard of proof on asylum applicants and
15 that the efforts of the federal courts to apply the proper standard
16 of proof "stand in stark contrast to -- but, it is sad to say, alone
17 cannot make up for -- the years of seemingly purposeful blindness by
18 the INS, which only begins its task of developing the standard
19 entrusted to its care."

20 (h) Although the INS granted asylum to almost 40% of
21 asylum applicants overall in Fiscal Year 1988, the INS granted
22 asylum to only 3% of Salvadoran and Guatemalan asylum applicants
23 despite the 1980 Refugee Act's elimination of ideological or
24 nationality-based criteria for granting refugee status.

25 (i) The United States District Court in the 1988 case
26 Orantes-Hernandez v. Meese permanently enjoined the Immigration and
27 Naturalization Service (INS) from continuing to intimidate and
28 coerce Salvadorans from seeking asylum in the United States.

29 (j) The California Attorney General has determined, and
30 the Ninth Circuit Court of Appeals in Gonzalez v. City of Peoria has

1 ruled, that the enforcement of the civil provisions of federal
2 immigration law is within the exclusive jurisdiction of the federal
3 government, and that state and local officials "have no duty to
4 report to the Immigration and Naturalization Service knowledge they
5 might have" about a person's immigration status or to enforce the
6 civil aspects of the federal immigration laws.

7 (k) It has been the policy of the Board of Supervisors of
8 the City and County of San Francisco to decline to commit or expend
9 any City or County financial or other resources to assist the INS in
10 the enforcement of federal immigration laws or to gather and
11 disseminate information regarding the immigration status of
12 individuals ~~living~~ in the City and County of San Francisco that is
13 not required by federal or state statute, regulation or court
14 decision.

/28/89
ST

15 (l) The City and County of San Francisco desires to foster
16 an atmosphere of trust and cooperation between the San Francisco
17 Police Department and all persons, regardless of immigration status,
18 in San Francisco. That atmosphere has been threatened by a recent
19 incident at the Club Elegante in the Mission district when a joint
20 force of INS, Alcohol Beverage Control (ABC) and San Francisco
21 Police Department (SFPD) officers conducted a raid. The approximate
22 two hundred patrons, including U.S. citizens, were detained for
23 periods of up to two hours. The incident has raised serious
24 concerns in the immigrant and refugee community regarding the
25 involvement of SFPD officers in enforcing federal civil immigration
26 laws.

/28/89
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27 (m) The Board of Supervisors of the City and County of San
28 Francisco affirms its support for H.R. 45 (Moakley) and S. 458
29 (DeConcini) which would provide temporary stays of deportation to
30 Salvadorans already in the United States.

SUPERVISORS WALKER, GONZALEZ, ALIOTO AND BRITT

PAGE 8

1 (n) The Board of Supervisors further affirms its
2 commendation of the congregations who have declared themselves as
3 sanctuaries for Salvadoran and Guatemalan refugees and who have
4 committed to provide support, protection and advocacy for Salvadoran
5 and Guatemalan refugees who live in the City and County of San
6 Francisco.

7

8 Section 2. The San Francisco Administrative Code is hereby
9 amended by adding thereto Chapter 12H, to read as follows:

10

11

Chapter 12H

12

13 SEC. 12H.1. City and County of Refuge. It is hereby affirmed
14 that the City and County of San Francisco is a City and County of
15 Refuge.

16

17 SEC. 12H.2. Use of City Funds Prohibited. No department,
18 agency, commission, officer or employee of the City and County of
19 San Francisco shall use any City funds or resources to assist in the
20 enforcement of federal immigration law or to gather or disseminate
/28/821 information regarding the immigration status of individuals living
BST in the City and County of San Francisco unless such assistance is
22 required by federal or state statute, regulation or court decision.
23 The prohibition set forth in this Chapter shall include, but shall
24 not be limited to:

25

26 (a) Assisting or cooperating, in one's official capacity,
27 with any Immigration and Naturalization Service (INS) investigation,
28 detention, or arrest procedures, public or clandestine, relating to
29 alleged violations of the civil provisions of the federal
30 immigration law.

1 (b) Assisting or cooperating, in one's official capacity,
2 with any investigation, surveillance or gathering of information
3 conducted by foreign governments, except for cooperation related to
4 an alleged violation of city and county, state or federal criminal
5 laws.

6 (c) Requesting information about, or disseminating
7 information regarding, the immigration status of any individual, or
8 conditioning the provision of services or benefits by the City and
9 County of San Francisco upon immigration status, except as required
10 by federal or state statute or regulation, City and County public
11 assistance criteria, or court decision.

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12 (d) Including on any application, questionnaire or interview
13 form used in relation to benefits, services or opportunities
14 provided by the City and County of San Francisco any question
15 regarding immigration status other than those required by federal or
16 state statute, regulation or court decision. Any such questions
17 existing or being used by the City and County at the time this
18 Chapter is adopted shall be deleted within sixty days of the
19 adoption of this Chapter.

20
21 SEC. 12H.3. Clerk of Board to Transmit Copies of This
22 Chapter; Informing City Employees. The Clerk of the Board of
23 Supervisors shall send copies of this Chapter, including any future
24 amendments thereto that may be made, to every department, agency and
25 commission of the City and County of San Francisco, to California's
26 United States Senators, and to the California Congressional
27 delegation, the Commissioner of the INS, the United States Attorney
28 General, and the Secretary of State and the President of the United
29 States. Each appointing officer of the City and County of San
30 Francisco shall inform all employees under her or his jurisdiction

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1 of the prohibitions in this ordinance the duty of all of her or his
2 employees to comply with the prohibitions in this ordinance, and
3 that employees who fail to comply with the prohibitions of the
4 ordinance shall be subject to appropriate disciplinary action.

5 Each city and county employee shall be given a written directive
6 with instructions for implementing the provisions of this Chapter.

7
8 SEC. 12H.4. Enforcement. The Human Rights Commission shall
9 review the compliance of the City and County departments, agencies,
10 commissions and employees with the mandates of this ordinance in
11 particular instances in which there is a question of noncompliance
12 or when a complaint alleging noncompliance has been lodged.

13
14 SEC. 12H.5 City Undertaking Limited to Promotion of General
15 Welfare. In undertaking the adoption and enforcement of this
16 Chapter, the City is assuming an undertaking only to promote the
17 general welfare. This Chapter is not intended to create any new
18 rights for breach of which the City is liable in money damages to
19 any person who claims that such breach proximately caused injury.
20 This section shall not be construed to limit or proscribe any other
21 existing rights or remedies possessed by such person.

22
23 SEC 12H.6 Severability. If any part of this ordinance, or the
24 application thereof, is held to be invalid, the remainder of this
25 ordinance shall not be affected thereby, and this ordinance shall
26 otherwise continue in full force and effect. To this end, the
27 provisions of this ordinance, and each of them, are severable.

28
29 APPROVED AS TO FORM:

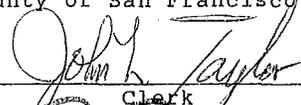
30 LOUISE H. RENNE
City Attorney

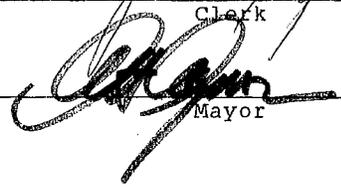
By: BSW
Deputy City Attorney

Board of Supervisors, San Francisco

Passed for Second Reading	§	Finally Passed
	§	
October 10, 1989	§	October 16, 1989
	§	
	§	
Ayes: Supervisors Alioto Britt Ward	§	Ayes: Supervisors Alioto Britt
Gonzalez Hallinan Hongisto Hsieh	§	Gonzalez Hallinan Hsieh Kennedy
Kennedy Maher Nelder Walker	§	Maher Nelder Walker
	§	
	§	Absent: Supervisors Hongisto Ward

I hereby certify that the foregoing ordinance was finally passed by the Board of Supervisors of the City and County of San Francisco



 Clerk


 Mayor

File No.
97-89-42

OCT 24 1989
Date Approved



**OFFICE OF THE SHERIFF
CITY AND COUNTY OF SAN FRANCISCO**

1 DR. CARLTON B. GOODLETT PLACE
ROOM 456, CITY HALL
SAN FRANCISCO, CALIFORNIA 94102



**Ross Mirkarimi
SHERIFF**

FOR IMMEDIATE RELEASE

July 16, 2015

CONTACT: Kenya Briggs

Office: 415-554-7247

Cell: 415-850-8046

Email: kenya.briggs@sfgov.org

**San Francisco Sheriff Ross Mirkarimi Responds to Mayor Ed Lee's
Call to Rescind ICE Contact Policy**

San Francisco, CA — San Francisco Sheriff Ross Mirkarimi today delivered his response to Mayor Ed Lee's July 14, 2015, letter calling on the San Francisco Sheriff's Department to rescind its policy regarding contact with Immigration and Customs Enforcement (ICE).

"This tragedy spotlights the need for legal clarity at every government level," stated Sheriff Mirkarimi. "This matter requires an open and honest conversation about the legislative intent and meaning of San Francisco's ordinances and how they comport with everyday enforcement of laws leading to deportations."

In his response, printed in its entirety below, the Sheriff asserts that the Mayor's request raises legal conflicts; the Sheriff asks for an open and immediate discussion, via a Board of Supervisors committee hearing, to resolve the conflicts, provide clarity, and produce a workable and fair ordinance.

July 15, 2015

Reference: 2015-120

The Honorable Edwin Lee
Mayor
City Hall, Room 200
San Francisco, CA 94102

Dear Mayor Lee:

I received your July 14, 2015 letter regarding the San Francisco Sheriff's Department's (SFSD) Federal Immigration communications policy. Your letter does not provide legal clarity regarding my department's duty under city law. Your request to immediately rescind the policy contributes to the confusion and conflict between the Sanctuary City Ordinance (Administrative Code 12H.2) and the Due Process For All

PHONE: 415-554-7225 FAX: 415-554-7050

WEBSITE: WWW.SFSHERIFF.COM

EMAIL: SHERIFF@SFGOV.ORG

Ordinance (Administrative Code 12I). I urge a resolution of these conflicts so that there is a consistent and uniform understanding of the laws.

Finger pointing around this tragedy serves no purpose other than election year politics. It would serve the public interest to have an immediate open discussion of the Sanctuary City Ordinance and the Due Process For All Ordinance. I propose that you and I and other stakeholders come before a committee hearing with the Board of Supervisors so that a resolution of the conflicts can be achieved in a meaningful and transparent way.

Your request to rescind the policy and require the SFSD to contact federal immigration officials would eviscerate the city's Due Process For All Ordinance, an ordinance I supported and which you signed into law. Historically, the only reason for SFSD to notify federal immigration officials of an individual's release has been in relation to honoring an immigration detainer. This practice has been curtailed by the Due Process For All Ordinance and the federal court ruling that any detention for the release of an individual to federal immigration officials without probable cause violates the Due Process Clause and the Fourth Amendment of the United States Constitution.

At present, the only request for notification SFSD has received from federal immigration officials is contained in the detainer form which the Due Process For All Ordinance prohibits SFSD from honoring, absent limited circumstances.

The only reason to now notify federal immigration officials of an individual's release would be to facilitate the release of the individual to the federal immigration officials. This would completely circumvent the requirements and intent of the Sanctuary City Ordinance, the Due Process For All Ordinance and lead to unconstitutional detentions.

In 2013, my office worked closely with the City Attorney's Office and the Board of Supervisors before and after the Due Process For All Ordinance was implemented to provide guidance on its provisions and effects. SFSD alerted representatives from the City Attorney's Office, the Board of Supervisors and you of provisions of the Ordinance that posed operational and procedural problems. In early 2015, I met with the Deputy Secretary and Secretary of Homeland Security separately on two occasions to confirm San Francisco's laws and procedures. I also expressed concern about the legality of the detainer/notification process.

I shall continue to ensure that SFSD policy as it relates to federal immigration issues is consistent with city, state, and federal laws. I therefore request legislative direction to reconcile the conflict inherent in your proposal versus city legislation prohibiting ICE detainees except in specific circumstances. Your request would require the Board of Supervisors to amend the Administrative Code as it relates to cooperation with federal immigration officials and honoring detainees.

In addition to clarifying city law, other solutions should be considered. One such solution is to propose that an Administrative Law Judge review immigration detainees and provide a warrant or finding of probable cause for those persons who federal immigration officials seek to detain.

I will continue to cooperate with any amendments to city legislation by the Board of Supervisors. I look forward to working with all city representatives including the Board of Supervisors and the City Attorney's Office to provide legal clarity to these sensitive and complex issues.

Sincerely,

ROSS MIRKARIMI
Sheriff

cc London Breed, President of the Board of Supervisors
Board of Supervisors

###

Office of the Mayor
City & County of San Francisco



Edwin M. Lee

July 14, 2015

Sheriff Ross Mirkarimi
1 Dr. Carlton B. Goodlett Place
Room 456
San Francisco, CA 94102

Dear Sheriff Mirkarimi:

It has come to my attention that in March of 2015 you ordered your department to cease all communications with Federal Immigration authorities regarding Requests for Notification pertaining to undocumented, convicted felons. I urge you to rescind this policy immediately, in the interest of public safety.

Our Sanctuary Ordinance allows for this. Local law enforcement may notify federal officials when a particular individual is set for release in certain circumstances (Admin Code 12H.2-1), action not prohibited by our Civil Detainer policy from 2013 (Admin Code 12I.3).

Sincerely,

A handwritten signature in cursive script, appearing to read "Edwin M. Lee".

Edwin M. Lee
Mayor

Attachment:

March 13, 2015 Interoffice Correspondence (Reference: 2015-036)

CC:

President London Breed
Members, San Francisco Board of Supervisors



San Francisco Sheriff's Department

INTER-OFFICE CORRESPONDENCE

March 13, 2015
Reference: 2015-036

TO: All Personnel
FROM: Sheriff Ross Mirkarimi *Ross Mirkarimi*
RE: Immigration & Custom Enforcement Procedures (ICE)
Contact and Communication

The San Francisco Sheriff's Department's (SFSD) policy is that there shall be limited contact and communication with ICE representatives absent a court issued warrant, a signed court order, or other legal requirement authorizing ICE access. Consistent with San Francisco Administrative Code Section 12H.2, "no department, agency, commission, officer or employee of the City and County of San Francisco shall use any city funds or resources to assist in the enforcement of federal immigration law or to gather or disseminate information regarding the immigration status of individuals in the City and County of San Francisco unless such assistance is required by federal or state statute, regulation, or court decision."

SFSD staff shall not provide the following information or access to ICE representatives:

- citizenship/immigration status of any inmate;
- access to inmates in jail;
- access to SFSD computers and/or databases;
- SFSD logs;
- booking and arrest documents;
- release dates or times;
- home or work contact information;
- other non-public jail records or information.

SFSD staff are authorized to provide the following public information (pursuant to California Government Code Section 6250, et seq.; San Francisco Administrative Code Chapter 67) regarding an inmate to ICE representatives upon request:

- current charges;
- arrest date and location;
- location in custody;
- next court date;
- bail amount.

No additional assistance or information shall be provided to ICE representatives regarding any current or former inmate unless the following requirements have been met:

- (1) Sheriff's legal has been contacted;
- (2) Sheriff's legal has confirmed that the ICE request is supported by a court issued warrant, a signed court order authorizing the ICE request, or that the access is required by federal or state statute, regulation or court decision; and
- (3) The Sheriff has authorized the access or release of information requested by ICE representatives.

This memorandum supersedes all previous directives regarding ICE contact or communication and is effective immediately. This ICE Contact and Communication memorandum is implemented in addition to the requirements of the ICE Immigration Detainer policy dated March 9, 2015, Reference: 2015-033.

Please contact Sheriff's Legal with any questions:

FREYA HORNE: 415-554-4334
MARK NICCO: 415-554-7212

Print Form

Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion, or Charter Amendment)
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor [] inquires"
- 5. City Attorney request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. []
- 9. Reactivate File No. []
- 10. Question(s) submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission Youth Commission Ethics Commission
- Planning Commission Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative Form.

Sponsor(s):

Supervisor Mark E. Farrell

Subject:

Resolution - Confirming the Board of Supervisors Support for the Sanctuary City and Due Process for All Ordinances and Urging the Sheriff to Immediately Rescind His Department-Wide Gag Order

The text is listed below or attached:

Attached.

Signature of Sponsoring Supervisor: 

For Clerk's Use Only: