

1 [Administrative Code - Due Process for All Notification]

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3 **Ordinance amending Administrative Code Chapter 12I to prohibit law enforcement**
 4 **officials from responding to a federal immigration officer's request for voluntary**
 5 **notification that a person will be released from local custody, except for adults who**
 6 **have been convicted of a violent felony and held to answer for a violent felony.**

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

11

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

13 Section 1. The Administrative Code is hereby amended by revising Chapter 12I,
 14 Sections 12I.2, 12I.3, and 12I.4, to read as follows:

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

16 "Eligible for release from custody" means that the individual may be released from
 17 custody because one of the following conditions has occurred:

18 (~~1a~~) All criminal charges against the individual have been dropped or dismissed.

19 (~~2b~~) The individual has been acquitted of all criminal charges filed against him or her.

20 (~~3c~~) The individual has served all the time required for his or her sentence.

21 (~~4d~~) The individual has posted a bond, or has been released on his or her own
 22 recognizance.

23 (~~5e~~) The individual has been referred to pre-trial diversion services.

24 (~~6f~~) The individual is otherwise eligible for release under state or local law.

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1 "Civil immigration detainer" means a non-mandatory request issued by an authorized
2 federal immigration officer under Section 287.7 of Title 8 of the Code of Federal Regulations,
3 to a local law enforcement official to maintain custody of an individual for a period not to
4 exceed forty-eight (48) hours, ~~excluding Saturdays, Sundays, and holidays,~~ and advise the
5 authorized federal immigration officer prior to the release of that individual.

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

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.

12 "Law enforcement official" means any City Department or officer or employee of a City
13 Department, authorized to enforce criminal statutes, regulations, or local ordinances; operate
14 jails or maintain custody of individuals in jails; and operate juvenile detention facilities or
15 maintain custody of individuals in juvenile detention facilities.

16 "Violent Felony" means any crime listed in Penal Code Section 667.5(c); human
17 trafficking as defined in Penal Code Section 236.1; felony assault with a deadly weapon as
18 defined in Penal Code Section 245; any crime involving use of a firearm, assault weapon,
19 machine ~~gun~~ gun, or .50 BMG rifle, while committing or attempting to commit a felony that is
20 charged as a sentencing enhancement as listed in Penal Code Sections 12022.4 and
21 12022.5.

22 **12I.3. RESTRICTIONS ON LAW ENFORCEMENT OFFICIALS.**

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

1 (b) Law enforcement officials may continue to detain an individual in response to a
2 civil immigration detainer for up to ~~forty-eight (48)~~ hours after that individual becomes eligible
3 for release if the continued detention is consistent with state and federal law and the individual
4 meets both of the following criteria:

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

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

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

17 (c) Notwithstanding Administrative Code section 12H.2-1 and except as provided in subsection
18 (d) below, a law enforcement official shall not respond to a federal immigration officer's request for
19 voluntary notification of an individual's release from local custody.

20 (d) Law enforcement officials may respond to a federal immigration officer's request for
21 voluntary notification of an individual's release from local custody by informing the federal
22 immigration officer - prior to the individual's release - that the individual will be released if the
23 individual meets both of the following criteria:

24 (1) The individual has been Convicted of a Violent Felony in the seven years
25 immediately prior to the date of the request for notification; and

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

4 In determining whether to respond to a federal immigration officer's request for voluntary
5 notification of release of an individual as permitted in this subsection (d), law enforcement officials
6 shall consider evidence of the individual's rehabilitation and evaluate whether the individual poses a
7 public safety risk. Evidence of rehabilitation or other mitigating factors to consider includes, but is not
8 limited to: the individual's ties to the community, whether the individual has been a victim of any crime,
9 the individual's contribution to the community, and the individual's participation in social service or
10 rehabilitation programs.

11 ~~This~~ These subsections (b) and (d) shall expire by operation of law on October 1, 2016,
12 or upon a resolution passed by the Board of Supervisors that finds for purposes of this
13 Chapter, the federal government has enacted comprehensive immigration reform that
14 diminishes the need for ~~this~~ these subsections (b) and (d), whichever comes first.

15 ~~(ee)~~ Law enforcement officials shall make good faith efforts to seek federal
16 reimbursement for all costs incurred in continuing to detain an individual, after that individual
17 becomes eligible for release, in response each civil immigration detainer.

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

19 The intent of this Chapter 12I is to address requests for non-mandatory civil
20 immigration detainees and federal immigration authorities' requests for voluntary notification of
21 release of individuals. Nothing in this Chapter shall be construed to apply to matters other than
22 those relating to federal civil immigration detainees or federal immigration authorities' requests for
23 voluntary notification of release of individuals. In all other respects, local law enforcement
24 agencies may continue to collaborate with federal authorities to protect public safety. This
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1 collaboration includes, but is not limited to, participation in joint criminal investigations that are
2 permitted under local policy or applicable city or state law.

3 Section 2. Effective Date. This ordinance shall become effective 30 days after
4 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
5 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
6 of Supervisors overrides the Mayor’s veto of the ordinance.

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

13 APPROVED AS TO FORM:
14 DENNIS J. HERRERA, City Attorney

15 By: _____
16 JANA CLARK
17 Deputy City Attorney

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