

1 [Administrative Code - Limits on Storage and Use of DNA Profiles]

2
3 **Ordinance amending the Administrative Code to prohibit the Police Department or**
4 **other City departments from uploading or storing DNA profiles known to belong to**
5 **crime victims (“Victim DNA Profiles”) in any City DNA database that is not subject to**
6 **the federal and state rules governing Combined DNA Index Systems (“CODIS”)**
7 **databases (“Non-CODIS DNA Databases”), and from storing DNA profiles obtained**
8 **from crime scene evidence (“Evidentiary DNA Profiles”) in any Non-CODIS DNA**
9 **Database for longer than 60 days; to require that, by July 1, 2022, or 15 days after the**
10 **effective date of this ordinance, the Police Department purge from Non-CODIS DNA**
11 **Databases Evidentiary DNA Profiles stored for longer than 60 days and Victim DNA**
12 **Profiles stored for any length of time; and to limit the Police Department and other City**
13 **departments to using Non-CODIS DNA Databases only for quality assurance purposes,**
14 **and not for any investigative purposes; to require the Controller to submit an audit**
15 **report regarding Non-CODIS DNA Databases; and to require posting on the Police**
16 **Department website and other City websites a description of how the Department**
17 **handles and stores a Victim’s DNA.**

18 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
19 **Additions to Codes** are in *single-underline italics Times New Roman font*.
20 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
21 **Board amendment additions** are in double-underlined Arial font.
22 **Board amendment deletions** are in ~~strikethrough Arial font~~.
23 **Asterisks (* * * *)** indicate the omission of unchanged Code
24 subsections or parts of tables.
25

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

1 Section 1. The Administrative Code is hereby amended by adding Chapter 96G,
2 consisting of Sections 96G.1-96G.79, to read as follows:

3
4 **CHAPTER 96G:**

5 **LIMITS ON POLICE DEPARTMENT USE AND STORAGE OF DNA PROFILES**

6
7 **SEC. 96G.1. DEFINITIONS.**

8 *For purposes of this Chapter 96G, the following terms have the following meanings.*

9 **(a) Terms related to DNA Profiles.**

10 *“DNA Profile” means a digital representation of the pattern of an individual’s DNA that may*
11 *be stored in a DNA Database. DNA Profile does not include the physical tissue or other physical*
12 *human material from which the DNA that is the subject of a DNA Profile is extracted and analyzed.*

13 *“Evidentiary DNA Profile” means a DNA Profile collected or analyzed as evidence or potential*
14 *evidence of a crime, including but not limited to a DNA Profile derived from material in a rape kit*
15 *following a sexual assault.*

16 *“Victim” means a person harmed as a result of a crime or alleged crime.*

17 *“Victim DNA Profile” means a DNA Profile known to belong to a Victim, including but not*
18 *limited to a DNA Profile from a reference sample contributed by a Victim for purposes of comparison*
19 *with Evidentiary DNA Profiles, and any Evidentiary DNA Profile determined to belong to a Victim.*

20 **(b) Terms related to DNA Databases.**

21 *“DNA Database” means a database used to store DNA Profiles.*

22 *“CODIS Database” means a DNA Database that is subject to the rules and standards that*
23 *apply to CODIS DNA Databases under state and federal law, including but not limited to FBI CODIS*
24 *Quality Assurance Standards and federal and state CODIS accreditation standards. CODIS is an*
25 *acronym that stands for Combined DNA Index Systems. CODIS Databases are maintained primarily to*

1 enable law enforcement to store and search DNA Profiles obtained from forensic evidence and
2 attributable to putative perpetrators of crime. CODIS Databases include but are not limited to the
3 National DNA Index System, state DNA Databases such as the CAL-DNA Data Bank, and certain local
4 DNA Databases operated by local law enforcement crime laboratories.

5 “Non-CODIS DNA Database” means a DNA Database that is accessed or maintained by the
6 Police Department or other City departments and is not a CODIS Database. Non-Codis DNA
7 Databases include but are not limited to any DNA Database used for elimination or decontamination
8 purposes (sometimes referred to as a “quality control” or “quality assurance” database), and any
9 DNA Database used for investigatory purposes that is not a CODIS Database.

10
11 **SEC. 96G.2. PROHIBITIONS ON UPLOADING AND STORING CERTAIN DNA**
12 **PROFILES.**

13 (a) Except as required by state or federal law, neither the Police Department nor any other
14 City department may upload or store a Victim DNA Profile in any Non-CODIS DNA Database. If a
15 DNA Profile already stored in a Non-CODIS DNA Database is determined to be a Victim DNA Profile,
16 the DNA Profile must be purged from that Non-CODIS DNA Database as soon as reasonably
17 practicable following that determination.

18 (b) Except as required by state or federal law, neither the Police Department nor any other
19 City department may store in any Non-CODIS DNA Database for longer than 60 days any Evidentiary
20 DNA Profile. Any Evidentiary DNA Profile must be purged from any Non-CODIS DNA Database in
21 which the Evidentiary DNA Profile has been stored for a period of 60 days.

22
23 **SEC. 96G.3. DNA PROFILE PURGE REQUIREMENT.**

24 By July 1, 2022, or 15 days after the effective date of the ordinance in Board File No. 220242,
25 establishing this Chapter 96G, the Police Department shall purge from all Non-CODIS DNA

1 Databases all Evidentiary DNA Profiles that have been stored in a Non-CODIS DNA Database for
2 longer than 60 days, and all Victim DNA Profiles that have been stored in a Non-CODIS DNA
3 Database for any length of time.

4
5 **SEC. 96G.4. USE OF NON-CODIS DNA DATABASES ONLY FOR QUALITY**

6 **ASSURANCE PURPOSES.**

7 The Police Department and other City departments may access, search, or otherwise use any
8 Non-CODIS DNA Database, including any Evidentiary DNA Profiles stored in the Non-CODIS DNA
9 Database, only for the purpose of identifying and/or eliminating contamination in a sample from which
10 DNA Profiles have been or may be identified, sometimes referred to as “quality assurance” or “quality
11 control” purposes, and not for any law enforcement investigative purpose.

12
13 **SEC. 96G.5. CONTROLLER’S AUDIT.** To the extent permitted by state and federal
14 law, within three months of the effective date of the ordinance in Board File No. 220242
15 establishing this Chapter 96G, the Controller shall audit all Non-CODIS DNA Databases
16 maintained by the Police Department and report to the Board of Supervisors on any use of
17 Evidentiary DNA Profiles for law enforcement investigative purposes since the creation of the
18 Non-CODIS DNA Database. This one-time audit shall include a list of all Victim DNA Profiles
19 that were collected and stored in the SFPD Non-CODIS DNA Database. The audit shall also
20 include a list of Victim DNA Profiles stored in the SFPD Non-CODIS DNA Database that were
21 used in criminal cases and the outcomes of those cases.

22
23 **SEC. 96G.6. NOTICE TO PUBLIC.**

24 Within two months of the effective date of the ordinance in Board File No. 220242
25 establishing this Chapter 96G, the Police Department (“SFPD”) shall prepare and publish on

1 SFPD’s website a one-time public notice detailing how SFPD handles and stores a Victim’s
2 DNA Profile (“SFPD Notice”). Such notice shall be posted for 30 days and shall include
3 information regarding SFPD’s practices and safeguards designed to ensure that SFPD will not
4 store Victim DNA Profiles in Non-CODIS DNA Databases and that SFPD has purged Victim
5 Profiles previously stored in SFPD’s Non-CODIS DNA Databases. The Department of Police
6 Accountability (“DPA”), Department of Public Health, and the Office of Sexual Harassment
7 and Assault Response and Prevention, shall post the SFPD Notice on their respective
8 websites for 30 days.

9
10 **SEC. 96G.75. UNDERTAKING FOR THE GENERAL WELFARE.**

11 *In enacting this Chapter 96G, the City is assuming an undertaking only to promote the general*
12 *welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of*
13 *which it is liable in money damages to any person who claims that such breach proximately caused*
14 *injury.*

15
16 **SEC. 96G.86. NO CONFLICT WITH FEDERAL OR STATE LAW.**

17 *Nothing in this Chapter 96G shall be interpreted or applied so as to create any requirement,*
18 *power, or duty in conflict with any federal or state law.*

19
20 **SEC. 96G.97. SEVERABILITY.**

21 *If any section, subsection, sentence, clause, phrase, or word of this Chapter 96G, or any*
22 *application thereof to any person or circumstance, is held to be invalid or unconstitutional by a*
23 *decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining*
24 *portions or applications of the Chapter. The Board of Supervisors hereby declares that it would have*
25 *passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not*

1 declared invalid or unconstitutional without regard to whether any other portion of this Chapter or
2 application thereof would be subsequently declared invalid or unconstitutional.

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

8
9 APPROVED AS TO FORM:
10 DAVID CHIU, City Attorney

11 By: /S/ Lauren Curry, for
12 SARAH CROWLEY
Deputy City Attorney

13 n:\legana\as2022\2200358\01587576.docx