

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~~from**

5 **crime victims reference samples (“Victim Reference DNA Profiles”) in any City DNA**

6 **database that is not subject to the federal and state rules governing Combined DNA**

7 **Index Systems (“CODIS”) databases (“Non-CODIS DNA Databases”), and from storing**

8 **DNA profiles obtained from crime scene evidence (“Evidentiary DNA Profiles”) in any**

9 **Non-CODIS DNA Database for longer than 60 days; to require that, by July 1, 2022, or**

10 **15 days after the effective date of this ordinance, the Police Department purge from**

11 **Non-CODIS DNA Databases Evidentiary DNA Profiles stored for longer than 60 days**

12 **and Victim Reference DNA Profiles stored for any length of time; and to limit the Police**

13 **Department and other City departments to using Non-CODIS DNA Databases only for**

14 **quality assurance purposes, and not for any investigative purposes; to require the**

15 **Controller to submit an audit report regarding Non-CODIS DNA Databases; and to**

16 **require posting on the Police Department website and other City websites a description**

17 **of how the Department 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 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 *“Reference DNA Profile” means a DNA Profile obtained from a known individual and*
17 *used for purposes of comparison with Evidentiary DNA Profiles.*

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

19 *“Victim Reference DNA Profile” means a DNA Profile known to belong to a Victim,*
20 *including but not limited to a Reference DNA Profile obtained from a reference sample*
21 *contributed by a Victim for purposes of comparison with Evidentiary DNA Profiles, and does*
22 *not include any Evidentiary DNA Profile determined to belong to a Victim.*

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

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

1 “CODIS Database” means a DNA Database that is subject to the rules and standards that
2 apply to CODIS DNA Databases under state and federal law, including but not limited to FBI CODIS
3 Quality Assurance Standards and federal and state CODIS accreditation standards. CODIS is an
4 acronym that stands for Combined DNA Index Systems. CODIS Databases are maintained primarily to
5 enable law enforcement to store and search DNA Profiles obtained from forensic evidence and
6 attributable to putative perpetrators of crime. CODIS Databases include but are not limited to the
7 National DNA Index System, state DNA Databases such as the CAL-DNA Data Bank, and certain local
8 DNA Databases operated by local law enforcement crime laboratories such as the Police
9 Department Crime Laboratory.

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

15
16 **SEC. 96G.2. PROHIBITIONS ON UPLOADING AND STORING CERTAIN DNA**
17 **PROFILES.**

18 (a) Except as required by state or federal law, or by accreditation standards, neither the
19 Police Department (“SFPD”) nor any other City department may upload or store a Victim Reference
20 DNA Profile in any Non-CODIS DNA Database. If a DNA Profile already stored in a Non-CODIS
21 DNA Database is determined to be a Victim Reference DNA Profile, the DNA Profile must be purged
22 from that Non-CODIS DNA Database as soon as reasonably practicable following that determination.

23 (b) Except as required by state or federal law, or by accreditation standards, neither the
24 Police Department SFPD nor any other City department may store in any Non-CODIS DNA
25 Database for longer than 60 days any Evidentiary DNA Profile. Any Evidentiary DNA Profile must be

1 purged from any Non-CODIS DNA Database in which the Evidentiary DNA Profile has been stored for
2 a period of 60 days.

3
4 **SEC. 96G.3. DNA PROFILE PURGE REQUIREMENT.**

5 By July 1, 2022, or 15 days after the effective date of the ordinance in Board File No.
6 _____ , establishing this Chapter 96G, the ~~Police Department~~SFPD shall purge from all Non-
7 CODIS DNA Databases all Evidentiary DNA Profiles that have been stored in a Non-CODIS DNA
8 Database for longer than 60 days, and all Victim Reference DNA Profiles that have been stored in a
9 Non-CODIS DNA Database for any length of time.

10
11 **SEC. 96G.4. USE OF NON-CODIS DNA DATABASES ONLY FOR QUALITY**
12 **ASSURANCE PURPOSES.**

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

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19 **SEC. 96G.5. CONTROLLER’S AUDIT.** To the extent permitted by state and federal
20 law, within three months of the effective date of the ordinance in Board File No. _____
21 establishing this Chapter 96G, the Controller shall audit all Non-CODIS DNA Databases
22 maintained by the ~~Police Department~~SFPD and report to the Board of Supervisors on any use
23 of Reference DNA Profiles and Evidentiary DNA Profiles for law enforcement investigative
24 purposes since the creation of the Non-CODIS DNA Database. This one-time audit shall
25 include a list of all Victim Reference DNA Profiles and all Evidentiary DNA Profiles determined

1 to belong to Victims that were are known to have been collected and stored in the SFPD Non-
2 CODIS DNA Database at any time. The audit shall also include a list of Victim Reference
3 DNA Profiles and Evidentiary DNA Profiles determined to belong to Victims that are known to
4 have been stored in the SFPD Non-CODIS DNA Database at any time and that were have
5 been used in criminal cases, together with and the outcomes of those cases.

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7 **SEC. 96G.6. NOTICE TO PUBLIC.**

8 Within two months of the effective date of the ordinance in Board File No. _____
9 establishing this Chapter 96G, the Police Department (“SFPD”) shall prepare and publish on
10 SFPD’s website a one-time public notice detailing how SFPD handles and stores a Victim’s
11 DNA Profile (“SFPD Notice”). Such notice shall be posted for 30 days and shall include
12 information regarding SFPD’s practices and safeguards designed to ensure that SFPD will not
13 store Victim Reference DNA Profiles in Non-CODIS DNA Databases and that SFPD has
14 purged Victim Reference DNA Profiles previously stored in SFPD’s Non-CODIS DNA
15 Databases. The Department of Police Accountability (“DPA”), Department of Public Health,
16 and the Office of Sexual Harassment and Assault Response and Prevention, shall post the
17 SFPD Notice on their respective websites for 30 days.

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19 **SEC. 96G.75. UNDERTAKING FOR THE GENERAL WELFARE.**

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

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

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

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4 **SEC. 96G.97. SEVERABILITY.**

5 If any section, subsection, sentence, clause, phrase, or word of this Chapter 96G, or any
6 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a
7 decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining
8 portions or applications of the Chapter. The Board of Supervisors hereby declares that it would have
9 passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not
10 declared invalid or unconstitutional without regard to whether any other portion of this Chapter or
11 application thereof would be subsequently declared invalid or unconstitutional.

12
13 Section 2. Effective Date. This ordinance shall become effective 30 days after
14 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
15 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
16 of Supervisors overrides the Mayor's veto of the ordinance.

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18 APPROVED AS TO FORM:
19 DAVID CHIU, City Attorney

20 By: /s/ Sarah Crowley
21 SARAH CROWLEY
22 Deputy City Attorney

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