

FILE NO. 130764

ORDINANCE NO.

[Administrative Code - Due Process for All Ordinance on Civil Immigration Detainers]

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

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

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

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

Chapter 12I: Civil Immigration Detainers

SEC. 12I.1. FINDINGS.

The City and County of San Francisco (the “City”) is home to persons of diverse racial, ethnic, and national backgrounds, including a large immigrant population. The City respects, upholds, and values equal protection and equal treatment for all of our residents, regardless of immigration status. Fostering a relationship of trust, respect, and open communication between City employees and City residents is essential to the City’s core mission of ensuring public health, safety, and welfare, and serving the needs of everyone in the community, including immigrants. The purpose of this Chapter is to foster respect between law enforcement and residents, to protect limited local resources, and to 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 civil immigration detainers. It is not a wise and effective use of valuable City resources
3 at a 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 local law enforcement
12 official requesting that the local law enforcement official hold the individual for up to 48 hours after
13 that individual would otherwise be released ("civil immigration detainers"). Civil immigration
14 detainers may be issued without evidentiary support or probable cause by border patrol agents,
15 aircraft pilots, special agents, deportation officers, immigration inspectors, and immigration
16 adjudication officers.

17 Given that civil immigration detainers are issued by immigration officers without judicial
18 oversight, and the regulation authorizing civil immigration detainers provides no minimum standard of
19 proof for their issuance, there are serious questions as to their constitutionality. Unlike criminal
20 detainers, which are supported by a warrant and require probable cause, there is no requirement for a
21 warrant and no established standard of proof, such as reasonable suspicion or probable cause, for
22 issuing an requesting a civil immigration detainer request. At least one federal court in Indiana
23 has ruled that because civil immigration detainers and other ICE "Notice of Action" documents are
24 issued without probable cause of criminal conduct, they do not meet the Fourth Amendment
25 requirements for state or local law enforcement officials to arrest and hold 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 civil immigration detainees are voluntary requests to local law enforcement agencies that do not
6 mandate compliance. California local law enforcement agencies may determine on their own whether
7 to comply with a voluntary non-mandatory civil immigration detainees. Other jurisdictions,
8 including Berkeley, California; Richmond, California; Santa Clara County, California; Washington,
9 D.C., and Cook County, Illinois, have already acknowledged the discretionary nature of civil
10 immigration detainees hold requests and are declining to hold people in their jails for the additional
11 forty-eight (48) hours as requested by ICE. under immigration detainees. Local law enforcement
12 agencies responsibilities, duties, and powers are regulated by state law. However, complying with
13 voluntary non-mandatory civil immigration detainees falls outside the scope of those responsibilities
14 and frequently raises due process concerns.

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

22 The City seeks to protect public safety, which is founded on trust and cooperation of community
23 residents and local law enforcement. However, civil immigration detainees undermine community trust
24 of law enforcement by instilling fear in immigrant communities of coming forward to report crimes and
25 cooperate with local law enforcement agencies. A 2013 study by the University of Illinois, entitled

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

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

20 The City has enacted numerous laws and policies to prevent its residents from becoming
21 entangled in the immigration system. But, the enforcement of immigration laws is a responsibility of
22 the federal government. A December 2012 ICE news release stated that deportations have hit record
23 figures each year. According to the Migration Policy Institute's 2013 report, entitled "Immigration
24 Enforcement in the United States: The Rise of a Formidable Machinery," the federal government
25 presently spends more on civil immigration enforcement than all federal criminal law enforcement

1 combined. Local funds should not be expended on such efforts, especially because such entanglement
2 undermines community policing strategies.

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4 **SEC. 12I.2. DEFINITIONS.**

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

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

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

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

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

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

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

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

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

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

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

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

2 *The intent of this Chapter is to address requests for non-mandatory civil immigration*
3 *detainers requests. Nothing in this Chapter shall be construed to apply to matters other than those*
4 *relating to federal civil immigration detainers. In all other respects, local law enforcement agencies*
5 *may continue to collaborate with federal authorities to protect public safety. This collaboration*
6 *includes, but is not limited to, participation in joint criminal investigations.* ~~that are permitted under~~
7 ~~local policy or applicable city or state law.~~

8 **SEC. 12I.5. SEVERABILITY.**

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

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

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

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

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4 APPROVED AS TO FORM:
5 DENNIS J. HERRERA, City Attorney

6 By: _____
7 Alicia Cabrera
8 Deputy City Attorney

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