

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.

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.

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.

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
/28/82
BST
21 information regarding the immigration status of individuals ~~living~~
22 in the City and County of San Francisco unless such assistance is
23 required by federal or state statute, regulation or court decision.
24 The prohibition set forth in this Chapter shall include, but shall
25 not be limited to:

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.

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

9/28/88
BST

10/
10/89

ejp

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

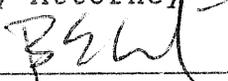
8 SEC. 12H.4. Enforcement. The Human Rights Commission shall
9 review the compliance of the City and County departments, agencies,
10 commissions and employees with the mandates of this ordinance in
11 particular instances in which there is a question of noncompliance
12 or when a complaint alleging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

Board of Supervisors, San Francisco

Passed for Second Reading

October 10, 1989

Ayes: Supervisors Alioto Britt Ward
Gonzalez Hallinan Hongisto Hsieh
Kennedy Maher Nelder Walker

§ Finally Passed
§
§ October 16, 1989
§
§

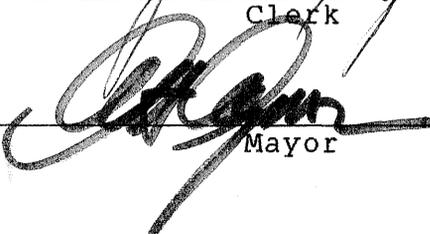
§ Ayes: Supervisors Alioto Britt
§ Gonzalez Hallinan Hsieh Kennedy
§ Maher Nelder Walker
§
§ Absent: Supervisors Hongisto Ward

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

File No.
97-89-42

OCT 24 1989
Date Approved



Clerk


Mayor