

1 [Administrative Code - Due Process for All and Sanctuary]

2
3 **Ordinance amending the Administrative Code to prohibit the use of City funds or**
4 **resources to assist in the enforcement of Federal immigration law, except for**
5 **individuals who have been convicted of a violent felony and held to answer for a**
6 **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.

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

15 Section 1. The Administrative Code is hereby amended by revising Section 12H.2 and
16 deleting Section 12H.2-1 in Chapter 12H, and revising Sections 12I.1, 12I.2, 12I.3, and 12I.4
17 in Chapter 12I, to read as follows:

18 **SEC. 12H.2. USE OF CITY FUNDS PROHIBITED.**

19 No department, agency, commission, officer, or employee of the City and County of
20 San Francisco shall use any City funds or resources to assist in the enforcement of Federal
21 immigration law or to gather or disseminate information regarding the immigration or release
22 status of individuals in the City and County of San Francisco unless such assistance is
23 required by Federal or State statute, regulation, or court decision. The prohibition set forth in
24 this Chapter 12H shall include, but shall not be limited to:

- 25 (a) Assisting or cooperating, in one's official capacity, with any investigation,
detention, or arrest procedures, public or clandestine, conducted by the Federal agency
charged with enforcement of the Federal immigration law and relating to alleged violations of

1 the civil provisions of the Federal immigration law, except as permitted under Administrative Code
2 Section 12I.3.

3 (b) Assisting or cooperating, in one's official capacity, with any investigation,
4 surveillance, or gathering of information conducted by foreign governments, except for
5 cooperation related to an alleged violation of City and County, State, or Federal criminal laws.

6 (c) Requesting information about, or disseminating information, in one's official
7 capacity, regarding, the immigration or release status of any individual, except as permitted under
8 Administrative Code Section 12I.3, or conditioning the provision of services or benefits by the City
9 and County of San Francisco upon immigration status, except as required by Federal or State
10 statute or regulation, City and County public assistance criteria, or court decision.

11 (d) Including on any application, questionnaire, or interview form used in relation to
12 benefits, services, or opportunities provided by the City and County of San Francisco any
13 question regarding immigration status other than those required by Federal or State statute,
14 regulation, or court decision. Any such questions existing or being used by the City and
15 County at the time this Chapter is adopted shall be deleted within sixty days of the adoption of
16 this Chapter.

17 **~~SEC. 12H.2-1. CHAPTER PROVISIONS INAPPLICABLE TO PERSONS CONVICTED~~**
18 **~~OF CERTAIN CRIMES.~~**

19 ~~Nothing in this Chapter shall prohibit, or be construed as prohibiting, a Law Enforcement~~
20 ~~Officer from identifying and reporting any adult pursuant to State or Federal law or regulation who is~~
21 ~~in custody after being booked for the alleged commission of a felony and is suspected of violating the~~
22 ~~civil provisions of the immigration laws. In addition, nothing in this Chapter shall prohibit, or be~~
23 ~~construed as prohibiting, a Law Enforcement Officer from identifying and reporting any juvenile who is~~
24 ~~suspected of violating the civil provisions of the immigration laws if: (1) the San Francisco District~~
25 ~~Attorney files a petition in the juvenile court alleging that the minor is a person within the description~~

1 ~~of Section 602(a) of the California Welfare and Institutions Code and the juvenile court sustains a~~
2 ~~felony charge based upon the petition; (2) the San Francisco Superior Court makes a finding of~~
3 ~~probable cause after the District Attorney directly files felony criminal charges against the minor in~~
4 ~~adult criminal court; or (3) the San Francisco Superior Court determines that the minor is unfit to be~~
5 ~~tried in juvenile court, the minor is certified to adult criminal court, and the Superior Court makes a~~
6 ~~finding of probable cause in adult criminal court.~~

7 ~~Nothing in this Chapter shall preclude any City and County department, agency, commission,~~
8 ~~officer or employee from (a) reporting information to the Federal agency charged with enforcement of~~
9 ~~the Federal immigration law regarding an individual who has been booked at any county jail facility,~~
10 ~~and who has previously been convicted of a felony committed in violation of the laws of the State of~~
11 ~~California, which is still considered a felony under State law; (b) cooperating with a request from the~~
12 ~~Federal agency charged with enforcement of the Federal immigration law for information regarding an~~
13 ~~individual who has been convicted of a felony committed in violation of the laws of the State of~~
14 ~~California, which is still considered a felony under State law; or (c) reporting information as required~~
15 ~~by Federal or State statute, regulation or court decision, regarding an individual who has been~~
16 ~~convicted of a felony committed in violation of the laws of the State of California, which is still~~
17 ~~considered a felony under State law. For purposes of this Section, an individual has been "convicted"~~
18 ~~of a felony when: (a) there has been a conviction by a court of competent jurisdiction; and (b) all direct~~
19 ~~appeal rights have been exhausted or waived; or (c) the appeal period has lapsed.~~

20 ~~However, no officer, employee or law enforcement agency of the City and County of San~~
21 ~~Francisco shall stop, question, arrest or detain any individual solely because of the individual's~~
22 ~~national origin or immigration status. In addition, in deciding whether to report an individual to the~~
23 ~~Federal agency charged with enforcement of the Federal immigration law under the circumstances~~
24 ~~described in this Section, an officer, employee or law enforcement agency of the City and County of San~~
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1 ~~Francisco shall not discriminate among individuals on the basis of their ability to speak English or~~
2 ~~perceived or actual national origin.~~

3 ~~This Section shall not apply in cases where an individual is arrested and/or convicted for failing~~
4 ~~to obey a lawful order of a Police Officer during a public assembly or for failing to disperse after a~~
5 ~~Police Officer has declared an assembly to be unlawful and has ordered dispersal.~~

6 ~~Nothing herein shall be construed or implemented so as to discourage any person, regardless of~~
7 ~~immigration status, from reporting criminal activity to law enforcement agencies.~~

8 **SEC. 12I.1. FINDINGS.**

9 The City and County of San Francisco (the "City") is home to persons of diverse racial,
10 ethnic, and national backgrounds, including a large immigrant population. The City respects,
11 upholds, and values equal protection and equal treatment for all of our residents, regardless
12 of immigration status. Fostering a relationship of trust, respect, and open communication
13 between City employees and City residents is essential to the City's core mission of ensuring
14 public health, safety, and welfare, and serving the needs of everyone in the community,
15 including immigrants. The purpose of this Chapter 12I, as well as of Administrative Code Chapter
16 12H, is to foster respect and trust between law enforcement and residents, to protect limited
17 local resources, to encourage cooperation between residents and City officials, including especially
18 law enforcement and public health officers and employees, and to ensure ~~family unity~~, community
19 security, and due process for all.

20 ~~Our federal immigration system is in dire need of comprehensive reform. The United States~~
21 ~~Immigration and Customs Enforcement ("ICE") is responsible for enforcing the civil immigration~~
22 ~~laws. ICE's programs, including Secure Communities and its replacement, the Priority Enforcement~~
23 ~~Program ("PEP"), seek to enlist local law enforcement's voluntary cooperation and assistance in its~~
24 ~~enforcement efforts. In its description of PEP, ICE explains that all requests under PEP are for~~
25 ~~voluntary action and that any request is not an authorization to detain persons at the expense of the~~

1 federal government. The federal government should not shift the financial burden of federal civil
2 immigration enforcement, including personnel time and costs related to notification and detention,
3 onto local law enforcement by requesting that local law enforcement agencies continue
4 detaining persons based on non-mandatory civil immigration detainers or cooperating and
5 assisting with requests to notify ICE that a person will be released from local custody. It is not a wise
6 and effective use of valuable City resources at a time when vital services are being cut.

7 ~~The United States Immigration and Customs Enforcement's "ICE 's" controversial~~ Secure
8 Communities program (also known as "S-Comm") ~~shifts~~sed the burden of federal civil
9 immigration enforcement onto local law enforcement. S-Comm ~~comes~~ came into operation after
10 the state ~~sends~~ sent fingerprints that state and local law enforcement agencies ~~have~~d
11 transmitted to the California Department of Justice ("Cal DOJ") to positively identify the
12 arrestees and to check their criminal history. The FBI would ~~forward~~s the fingerprints to the
13 Department of Homeland Security ("DHS") to be checked against immigration and other
14 databases. To give itself time to take a detainee into immigration custody, ICE would ~~send~~s an
15 Immigration Detainer – Notice of Action (DHS Form I-247) to the local law enforcement official
16 requesting that the local law enforcement official hold the individual for up to 48 hours after
17 that individual would otherwise be released ("civil immigration detainers"). Civil Immigration
18 detainers may be issued without evidentiary support or probable cause by border patrol
19 agents, aircraft pilots, special agents, deportation officers, immigration inspectors, and
20 immigration adjudication officers.

21 Given that civil immigration detainers are issued by immigration officers without judicial
22 oversight, and the regulation authorizing civil immigration detainers provides no minimum
23 standard of proof for their issuance, there are serious questions as to their constitutionality.
24 Unlike criminal warrants, which must be supported by probable cause and issued by a neutral
25 magistrate, there ~~is~~are no such requirements for the issuance of a civil immigration detainer. ~~A~~

1 ~~least one~~ Several federal courts ~~in Indiana~~ have ruled that because civil immigration detainees
2 and other ICE "Notice of Action" documents are issued without probable cause of criminal
3 conduct, they do not meet the Fourth Amendment requirements for state or local law
4 enforcement officials to arrest and hold an individual in custody. (Miranda-Olivares v.
5 Clackamas Co., No. 3:12-cv-02317-ST *17 (D.Or. April 11, 2014) (finding that detention pursuant to
6 an immigration detainee is a seizure that must comport with the Fourth Amendment). See also Morales
7 v. Chadbourne, 996 F. Supp. 2d 19, 29 (D.R.I. 2014); Villars v. Kubiakowski, No. 12-cv-4586 *10-12
8 (N.D. Ill. filed May 5, 2014).)

9 On December 4, 2012, the Attorney General of California, Kamala Harris, clarified the
10 responsibilities of local law enforcement agencies under S-Comm. The Attorney General
11 clarified that S-Comm ~~does~~ does not require state or local law enforcement officials to determine
12 an individual's immigration status or to enforce federal immigration laws. The Attorney
13 General also clarified that civil immigration detainees are voluntary requests to local law
14 enforcement agencies that do not mandate compliance. California local law enforcement
15 agencies may determine on their own whether to comply with non-mandatory civil immigration
16 detainees. In a June 25, 2014, bulletin, the Attorney General warned that a federal court outside of
17 California had held a county liable for damages where it voluntarily complied with an ICE request to
18 detain an individual, and the individual was otherwise eligible for release and that local law
19 enforcement agencies may also be held liable for such conduct. ~~Other~~ Over 350 jurisdictions,
20 including Berkeley, California; Richmond, California; Santa Clara County, California; Washington,
21 D. C., ~~and~~ Cook County, Illinois, and many of California's 58 counties have already
22 acknowledged the discretionary nature of civil immigration detainees and are declining to hold
23 people in their jails for the additional ~~forty-eight~~ (48) hours as requested by ICE. Local law
24 enforcement agencies' responsibilities, duties, and powers are regulated by state law.

1 However, complying with non-mandatory civil immigration detainers *falls outside the scope of*
2 *those responsibilities and* frequently raises due process concerns.

3 According to Section 287.7 of Title 8 of the Code of Federal Regulations, the City is not
4 reimbursed by the federal government for the costs associated with civil immigration detainers
5 alone. The full cost of responding to a civil immigration detainer can include, but is not limited
6 to, extended detention time, the administrative costs of tracking and responding to detainers,
7 and the legal liability for erroneously holding an individual who is not subject to a civil
8 immigration detainer. Compliance with civil immigration detainers and involvement in civil
9 immigration enforcement diverts limited local resources from programs that are beneficial to
10 the City.

11 The City seeks to protect public safety, which is founded on trust and cooperation of
12 community residents and local law enforcement. However, civil immigration detainers *and*
13 *notifications regarding release* undermine community trust of law enforcement by instilling fear
14 in immigrant communities of coming forward to report crimes and cooperate with local law
15 enforcement agencies. A 2013 study by the University of Illinois, entitled "Insecure
16 Communities: Latino Perceptions of Police Involvement in Immigration Enforcement," found
17 that at least 40% *percent* of Latinos surveyed are less likely to provide information to police
18 because they fear exposing themselves, family, or friends to a risk of deportation. Indeed, civil
19 immigration detainers have resulted in the transfer of victims of crime, including domestic
20 violence victims, to ICE. *According to a national 2011 study by the Chief Justice Earl Warren*
21 *Institute on Law and Social Policy at UC Berkeley, entitled "Secure Communities by the Numbers: An*
22 *Analysis of Demographics and Due Process" ("2011 Warren Institute Study"), ICE has falsely detained*
23 *approximately 3,600 U.S. citizens as a result of S-Comm. Thus, S-Comm leaves even those with legal*
24 *status vulnerable to civil immigration detainers issued without judicial review or without proof of*
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1 ~~criminal activity, in complete disregard for the due process rights of those subject to the civil~~
2 ~~immigration detainers.~~

3 The City has enacted numerous laws and policies to strengthen communities and to
4 build trust between communities and local law enforcement. Local cooperation and assistance with
5 civil immigration enforcement keep families united. In contrast, ICE civil immigration detainers have
6 resulted in the separation of families. According to the 2011 Warren Institute Study, it is estimated that
7 more than one-third of those targeted by S-Comm had a U.S. citizen spouse or child. Complying with
8 civil immigration detainers thus resulted in the deportation of potential aspiring U.S. citizens.
9 According to the 2011 Warren Institute Study, Latinos made up 93% of those detained through S-
10 Comm, although they only account for 77% of the undocumented population in the U.S. As a result, S-
11 Comm has had a disproportionate impact on Latinos.

12 ~~The City has enacted numerous laws and policies to prevent its residents from becoming~~
13 ~~entangled in the immigration system. But, the enforcement of immigration laws is a responsibility of the~~
14 ~~federal government. A December 2012 ICE news release stated that deportations have hit record~~
15 ~~figures each year. According to the Migration Policy Institute's 2013 report, entitled "Immigration~~
16 ~~Enforcement in the United States: The Rise of a Formidable Machinery," the federal government~~
17 ~~presently spends more on civil immigration enforcement than all federal criminal law enforcement~~
18 ~~combined. Local funds should not be expended on such efforts, especially because such entanglement~~
19 ~~undermines community policing strategies.~~

20 In 2014, DHS ended the Secure Communities program and replaced it with PEP. PEP and S-
21 Comm share many similarities. Just as with S-Comm, PEP uses state and federal databases to check
22 an individual's fingerprints against immigration and other databases. PEP employs a number of
23 tactics to facilitate transfers of individuals from local jails to immigration custody.

24 First, PEP uses a new form (known as DHS Form I-247N), which requests notification from
25 local jails about an individual's release date prior to his or her release from local custody. As with

1 civil immigration detainees, these notification requests are issued by immigration officers without
2 judicial oversight, thus raising questions about local law enforcement’s liability for constitutional
3 violations if any person is overdetailed when immigration agents are unable to be present at the time
4 of the person’s release from local custody.

5 Second, under PEP, ICE will continue to issue civil immigration detainer requests where local
6 law enforcement officials are willing to respond to the requests, and in instances of “special
7 circumstances,” a term that has yet to be defined by DHS. Despite federal courts finding civil
8 immigration detainees do not meet Fourth Amendment requirements, local jurisdictions are often
9 unable to confirm whether or not a detention request is supported by probable cause or has been
10 reviewed by a neutral magistrate.

11 The increase in information-sharing between local law enforcement and immigration officials
12 raises serious concerns about privacy rights. Across the country, including in the California Central
13 Valley, there has been an increase of ICE agents stationed in jails, who often have unrestricted access
14 to jail databases, booking logs, and other documents that contain personal information of all jail
15 inmates.

16 The City has an interest in ensuring that confidential information collected in the course of
17 carrying out its municipal functions, including but not limited to public health programs and criminal
18 investigations, is not used for unintended purposes that could hamper collection of information vital to
19 those functions. To carry out public health programs, the City must be able to reliably collect
20 confidential information from all residents. To solve crimes and protect the public, local law
21 enforcement depends on the cooperation of all City residents. Information gathering and cooperation
22 may be jeopardized if release of personal information results in a person being taken into immigration
23 custody.

24 In late 2015, Pedro Figueroa, an immigrant father of an 8-year-old U.S. citizen, sought the San
25 Francisco Police Department’s help in locating his stolen vehicle. When Mr. Figueroa went to the

1 police station to retrieve his car, which police had located, he was detained for some time by police
2 officers before being released, and an ICE agent was waiting to take him into immigration custody
3 immediately as he left the police station. It was later reported that both the Police Department and the
4 San Francisco Sheriff's Department had contact with ICE officials while Mr. Figueroa was at the
5 police station. He spent over two months in an immigration detention facility and remains in
6 deportation proceedings. Mr. Figueroa's case has raised major concerns about local law
7 enforcement's relationship with immigration authorities, and has weakened the immigrant community's
8 confidence in policing practices. Community cooperation with local law enforcement is critical to
9 investigating and prosecuting crimes. Without the cooperation of crime victims – like Mr. Figueroa –
10 and witnesses, local law enforcement's ability to investigate and prosecute crime, particularly in
11 communities with large immigrant populations, will be seriously compromised.

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

13 "Administrative warrant" means a document issued by the federal agency charged with the
14 enforcement of the Federal immigration law that is used as a non-criminal, civil warrant for
15 immigration purposes.

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

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

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

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

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

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

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 "Notification request" means a non-mandatory request issued by an authorized federal
17 immigration officer to a local law enforcement official asking for notification to the authorized
18 immigration officer of an individual's release from local custody prior to the release of an individual
19 from local custody. Notification requests may also include informal requests for release information by
20 the Federal agency charged with enforcement of the Federal immigration law.

21 "Personal information" means any confidential, identifying information about an individual,
22 including, but not limited to, home or work contact information, and family or emergency contact
23 information.

24 "Violent Felony" means any crime listed in Penal Code Section 667.5(c); human
25 trafficking as defined in Penal Code Section 236.1; felony assault with a deadly weapon as

1 defined in Penal Code Section 245; any crime involving use of a firearm, assault weapon,
2 machine ~~gun~~ gun, or .50 BMG rifle, while committing or attempting to commit a felony that is
3 charged as a sentencing enhancement as listed in Penal Code Sections 12022.4 and
4 12022.5.

5 **12I.3. RESTRICTIONS ON LAW ENFORCEMENT OFFICIALS.**

6 (a) Except as provided in subsection (b), a law enforcement official shall not detain an
7 individual on the basis of a civil immigration detainer after that individual becomes eligible for
8 release from custody or respond to a federal immigration officer's notification request.

9 (b) Law enforcement officials may continue to detain an individual in response to a
10 civil immigration detainer for up to ~~forty-eight (48)~~ hours after that individual becomes eligible
11 for release and may respond to a federal immigration officer's notification request if the continued
12 detention is consistent with state and federal law, and the individual meets both of the following
13 criteria:

14 (1) The individual has been Convicted of a Violent Felony in the seven years
15 immediately prior to the date of the civil immigration detainer or notification request; and

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

19 In determining whether to continue to detain an individual based solely on a civil
20 immigration detainer or respond to a notification request as permitted in this subsection (b), law
21 enforcement officials shall consider evidence of the individual's rehabilitation and evaluate
22 whether the individual poses a public safety risk. Evidence of rehabilitation or other mitigating
23 factors to consider includes, but is not limited to: the individual's ties to the community,
24 whether the individual has been a victim of any crime, the individual's contribution to the
25 community, and the individual's participation in social service or rehabilitation programs.

1 This subsection (b) shall expire by operation of law on October 1, 2016, or upon a
2 resolution passed by the Board of Supervisors that finds for purposes of this Chapter, the
3 federal government has enacted comprehensive immigration reform that diminishes the need
4 for this subsection (b), whichever comes first.

5 (c) Law enforcement officials shall not arrest or detain an individual, or provide any
6 individual's personal information to a federal immigration officer, on the basis of an administrative
7 warrant, prior deportation order, or other civil immigration document based solely on alleged
8 violations of the civil provisions of immigration laws.

9 (ed) Law enforcement officials shall make good faith efforts to seek federal
10 reimbursement for all costs incurred in continuing to detain an individual, after that individual
11 becomes eligible for release, in response each civil immigration detainer.

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

13 The intent of this Chapter 12I is to address requests for non-mandatory civil
14 immigration detainees, voluntary notification of release of individuals, transmission of personal
15 information, and civil immigration documents based solely on alleged violations of the civil provisions
16 of immigration laws. Nothing in this Chapter shall be construed to apply to matters other than
17 those relating to federal civil immigration detainees, notification of release of individuals,
18 transmission of personal information, or civil immigration documents, based solely on alleged
19 violations of the civil provisions of immigration laws. In all other respects, local law enforcement
20 agencies may continue to collaborate with federal authorities to protect public safety. This
21 collaboration includes, but is not limited to, participation in joint criminal investigations that are
22 permitted under local policy or applicable city or state law.

23 Section 2. Effective Date. This ordinance shall become effective 30 days after
24 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
25

1 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
2 of Supervisors overrides the Mayor's veto of the ordinance.

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

9
10 APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

11
12 By: _____
JANA CLARK
13 Deputy City Attorney

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