COMMITTEE/BOARD OF SUPERVISORS
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Committee: Neighborhood Services & Safety  Date: September 5, 2013
Board of Supervisors Meeting  Date: October 1, 2013

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Completed by: Derek Evans  Date: 8/28/13
Completed by: Derek Evans  Date: 9/12/13

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document can be found in the file.
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, except for individuals who have a prior conviction for a violent felony within a certain period of time, are currently being charged with a violent felony, and may pose a public safety risk.

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-underline Arial font. Board amendment deletions are in strikethrough 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.67, 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
enforcement by requesting that local law enforcement agencies continue detaining persons based on
non-mandatory civil immigration detainers. It is not a wise and effective use of valuable City resources
at a time when vital services are being cut.

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

Given that civil immigration detainers are issued by immigration officers without judicial
oversight, and the regulation authorizing civil immigration detainers provides no minimum standard of
proof for their issuance, there are serious questions as to their constitutionality. Unlike criminal
warrants, which must be supported by probable cause, there is no such requirement for the
issuance of a civil immigration detainer. Unlike criminal detainers, which are supported by a
warrant and require probable cause, there is no requirement for a warrant and no established
standard of proof, such as reasonable suspicion or probable cause, for issuing an requesting
A civil immigration detainer request. At least one federal court in Indiana has ruled that because civil immigration detainers and other ICE “Notice of Action” documents are issued without probable cause of criminal conduct, they do not meet the Fourth Amendment requirements for state or local law enforcement officials to arrest and hold an individual in custody.

On December 4, 2012, the Attorney General of California, Kamala Harris, clarified the responsibilities of local law enforcement agencies under S-Comm. The Attorney General clarified that S-Comm does not require state or local law enforcement officials to determine an individual’s immigration status or to enforce federal immigration laws. The Attorney General also clarified that civil immigration detainers are voluntary requests to local law enforcement agencies that do not mandate compliance. California local law enforcement agencies may determine on their own whether to comply with a voluntary non-mandatory civil immigration detainer. Other jurisdictions, including Berkeley, California; Richmond, California; Santa Clara County, California; Washington, D.C., and Cook County, Illinois, have already acknowledged the discretionary nature of civil immigration detainers, hold requests and are declining to hold people in their jails for the additional forty-eight (48) hours as requested by ICE under immigration detainers. Local law enforcement agencies’ responsibilities, duties, and powers are regulated by state law. However, complying with voluntary non-mandatory civil immigration detainers falls outside the scope of those responsibilities and frequently raises due process concerns.

According to Section 287.7 of Title 8 of the Code of Federal Regulations, the City is not reimbursed by the federal government for the costs associated with civil immigration detainers alone. The full cost of responding to an civil immigration detainer can include, but is not limited to, extended detention time, the administrative costs of tracking and responding to detainers, and the legal liability for erroneously holding an individual who is not subject to an civil immigration detainer. Compliance with civil immigration detainers and involvement in civil immigration enforcement diverts limited local resources from programs that are beneficial to the City.
The City seeks to protect public safety, which is founded on trust and cooperation of community residents and local law enforcement. However, civil immigration detainers undermine community trust of law enforcement by instilling fear in immigrant communities of coming forward to report crimes and cooperate with local law enforcement agencies. A 2013 study by the University of Illinois, entitled “Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement,” found that at least 40 percent of Latinos surveyed are less likely to provide information to police because they fear exposing themselves, family, or friends to a risk of deportation. Indeed, civil immigration detainers have resulted in the transfer of victims of crime, including domestic violence victims, to ICE. According to a national 2011 study by the Chief Justice Earl Warren Institute on Law and Social Policy at UC Berkeley, entitled “Secure Communities by the Numbers: An Analysis of Demographics and Due Process” (“2011 Warren Institute Study”), ICE has falsely detained approximately 3,600 U.S. citizens as a result of S-Comm. Thus, S-Comm leaves even those with legal status vulnerable to civil immigration detainers issued without judicial review or without proof of criminal activity, in complete disregard for the due process rights of those subject to the civil immigration detainers.

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

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

SEC. 12L2. DEFINITIONS.

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

1. All criminal charges against the individual have been dropped or dismissed.
2. The individual has been acquitted of all criminal charges filed against him or her.
3. The individual has served all the time required for his or her sentence.
4. The individual has posted a bond, or has been released on his or her own recognizance.
5. The individual has been referred to pre-trial diversion services.
6. The individual is otherwise eligible for release under state or local law.

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

“Convicted” means state of having been proved guilty in a judicial proceeding, unless the convictions have been expunged or vacated pursuant to applicable law. The date that an individual is Convicted starts from the date of release.
"Firearm" means a device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of an explosion or other form of combustion as defined in Penal Code Section 16520.

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

"Violent Felony" means any crime listed in Penal Code Section 667.5(c); human trafficking as defined in Penal Code Section 236.1; felony assault with a deadly weapon as defined in Penal Code Section 245; any crime involving use of a firearm, assault weapon, machinegun, or .50 BMG rifle, while committing or attempting to commit a felony that is charged as a sentencing enhancement as listed in Penal Code Sections 12022.4 and 12022.5.

SEC. 121.3. RESTRICTIONS ON LAW ENFORCEMENT OFFICIALS.
(a) Except as provided in subsection (b), a law enforcement official shall not detain an individual on the basis of a civil immigration detainer after that individual becomes eligible for release from custody.

(b) Law enforcement officials may continue to detain an individual in response to a civil immigration detainer for up to forty-eight (48) hours after that individual becomes eligible for release if the individual meets both of the following criteria:

(1) The individual has been convicted of a Violent Felony in the seven years immediately prior to the date of the civil immigration detainer; and
(2) A magistrate has determined that there is probable cause to believe the
individual is guilty of a Violent Felony and has ordered the individual to answer to the same
pursuant to Penal Code Section 872.

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

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

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

SEC. 1214. PURPOSE OF THIS CHAPTER.

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

SEC. 12I.5. ANNUAL REPORT.
By no later than July 1, 2014, the Sheriff and Juvenile Probation Officer shall each
provide to the Board of Supervisors and the Mayor a written report stating the number of
detentions that were solely based on civil immigration detainers during the first six months
following the effective date of this Chapter, and detailing the rationale behind each of those
civil immigration detainers. Thereafter, the Sheriff and Juvenile Probation Officer shall each
annually submit a written report to the Board of Supervisors and the Mayor, by July 1st of
each year, addressing the same issues for the time period covered by the report.

SEC. 12I.65. SEVERABILITY.
If any section, subsection, sentence, clause, phrase, or word of this Chapter 12I, or it
application, is for any reason held to be invalid or unconstitutional by a decision of any court of
competent jurisdiction, such decision shall not affect the validity of the remaining portions of this
Chapter 12I. The Board of Supervisors hereby declares that it would have passed this Chapter 12I and
each and every section, subsection, sentence, clause, phrase, and word not declared invalid or
unconstitutional without regard to whether any other portion of this Chapter 12I would be subsequently
declared invalid or unconstitutional.

SEC 12I.76. UNDERTAKING FOR THE GENERAL WELFARE.
In enacting and implementing this Chapter 12I, the City is assuming an undertaking only to
promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an
obligation for breach of which it is liable in money damages to any person who claims that such breach
proximately caused injury.

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

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

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney
By: ALICIA CABRERA
   Deputy City Attorney
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Supervisors Avalos, Breed, Campos, Chiu, Cohen, Kim, Mar, Yee
BOARD OF SUPERVISORS
LEGISLATIVE DIGEST
(Updated following Board of Supervisors meeting, September 24, 2013)

[Administrative Code - Due Process Ordinance for All 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, except for individuals who have a prior conviction for a violent felony within a certain period of time, are currently being charged with a violent felony, and may pose a public safety risk.

Existing Law

No City law prohibits law enforcement officials from continuing to hold an individual, after the individual becomes eligible for release, solely based on a civil immigration detainer.

Amendments to Current Law

As originally proposed, this ordinance (Chapter 12I of the Administrative Code) would prohibit local law enforcement officials from detaining an individual solely based on a civil immigration detainer after that individual becomes eligible for release from custody.

The intent of this Chapter is to address civil immigration detainer requests. Nothing in this Chapter shall be construed to apply to matters other than those relating to federal civil immigration detainers. In all other respects, local law enforcement agencies may continue to collaborate with federal authorities to protect public safety. This collaboration includes, but is not limited to, participation in joint criminal investigations.

Committee Amendments

On September 5, 2013, the Neighborhood Services and Safety Committee adopted technical amendments that clarified the intent and purpose of this Chapter.

Board Amendments

On September 24, 2013, the Board of Supervisors adopted amendments that would require local law enforcement officials to continue to detain an individual in response to a civil immigration detainer for up to 48 hours after that individual becomes eligible for release if: (1) the individual has been convicted of a Violent Felony within a specified period of time; and (2) a magistrate has determined that there is sufficient cause to believe the individual is guilty of a Violent Felony and ordered the individual to answer to the same pursuant to Penal Code section 872; and (3) the local law enforcement official considers evidence of rehabilitation and concludes the individual poses a public safety risk. If, however, the individual waives his or

Supervisors Avalos, Breed, Campos, Chiu, Cohen, Kim, Mar, Yee
BOARD OF SUPERVISORS
her right to a preliminary hearing or the grand jury returns an indictment, the exception does not apply and the general rule, that local law enforcement officials may not detain an individual solely based on an immigration detainer after that individual becomes eligible for release from custody, will govern.
YOUTH COMMISSION
MEMORANDUM

TO: Honorable Mayor Edwin M. Lee
Honorable Members, Board of Supervisors

CC: Angela Calvillo, Clerk of the Board
Jason Elliott, Director of Legislative & Government Affairs, Mayor's Office
Hydra Mendoza, Mayor's Families & Children's Advisor
Derek Evans, Committee Clerk, Board of Supervisors

FROM: Youth Commission

DATE: September 12, 2013

RE: Youth Commission's support and statement on Board of Supervisors file no. 130764 proposed Due Process for All ordinance.

At our special inaugural meeting on September 9th, 2013 the Youth Commission voted unanimously to support the following motion:

To support file no. 130764, a proposed ordinance which would amend the Administrative Code, by adding Chapter 121, to prohibit law enforcement officials from detaining individuals on the basis of an immigration detainer after they become eligible for release from custody.

***

We would like to give you some context for the position expressed above.

Our motion to unanimously support the proposed action by the Board of Supervisors to provide due process for all comes from the consensus amidst Youth Commissioners that federal immigration enforcement and our criminal justice system should be separate and should treat all residents equally regardless of immigration status, and that these tenets form the basis of a strong relationship of trust between local law enforcement and residents that is in the interest of public safety.

During discussion on this item, Youth Commissioners proposed the following comment and recommendations regarding this legislation:

The Youth Commission supports the framing of this legislation as a due process issue, and supports due process for all, regardless of immigration status or background.
Should the proposed ordinance pass, the Youth Commission urges the Board of Supervisors to request or prepare a report following one year after the ordinance takes effect to see how the ordinance has worked and how trust is being restored between immigrant communities and local law enforcement.

The Youth Commission urges the Board of Supervisors to undertake an extensive outreach campaign to reach immigrant communities throughout San Francisco, as well as people detained, that would include multilingual resources regarding their rights in the criminal justice system and with local law enforcement. Some recommendations to include in an outreach campaign include, but are not limited to a bus ad campaign, pamphlet distribution in public spaces and through community based organizations, through ethnic media, and school-based announcements.

***

If you have any questions about these recommendations or anything related to the Youth Commission, please don't hesitate to contact our office at (415) 554-6448 or your Youth Commissioner.
Gray Panthers of San Francisco
2940 16th Street, Room 200-3
San Francisco CA, 94103
415-552-8800, graypanther-sf@sonic.net

Supervisors: Say No to Amendments to SF’s “Due Process for All” Ordinance

SF Gray Panthers has long opposed Secure Communities (S-COMM), a federal program that has resulted in deportation of over 142,000 undocumented immigrants. Under S-COMM, fingerprints of ANYONE arrested by local police are sent to the immigration authority, ICE, which screens the fingerprints for undocumented immigrants and request local police to hold them for deportation, even if the charges for arrest are dropped or the person could have been bailed out or released on their own recognizance. Racial profiling and arrests on false pretext have soared under S-COMM, leading to a national outcry, as thousands of families have been broken up and children separated from their parents.

In response, States and Cities have passed laws directing their police and jail systems to ignore ICE requests that jailed undocumented immigrants be held without release options so they can be deported. San Francisco’s proposed “Due Process for All” Ordinance, scheduled for a first Supervisor’s Hearing on September 17, is such a law. The legislation prohibits law enforcement officials from detaining individuals solely in response to immigration detainer requests issued by immigration authorities under S-COMM. The Ordinance is needed: In 2012, 542 people were turned over to ICE on detainers in San Francisco.

However, Mayor Ed Lee, Supervisor Katy Tang, and Police Chief Greg Suhr are trying to introduce amendments weakening the “Due Process for All” ordinance by creating “carve-outs,” exceptions to the prohibition, or allowing the Sheriff discretion to follow an ICE detainer request, in cases where undocumented immigrants are convicted and serve prison terms for serious or violent crimes. Gray Panthers of San Francisco is skeptical of this slippery slope, because S-COMM has always been promoted as targeting dangerous and violent immigrants, even though 60% of S-COMM deportees committed no violent or major crimes, and 29% committed no crime at all. Federal authorities have promised on several occasions to use prosecutorial discretion and only use S-COMM to deport violent and dangerous criminals, but this has not happened. But the real issue is bigger.

Those favoring amendments to the Due Process for All Ordinance argue that undocumented immigrants convicted of felonies or violent crimes should be detained for deportation following completion of their prison
terms, or if they re-offend. We disagree: people, even violent offenders, should not be discriminated against because of their documentation status. Due Process for All means that citizens, documented and undocumented are all treated alike, regardless of how or whether they committed a crime. We need to focus on rehabilitation of violent offenders in prison, not their immigration status. If we are worried about undocumented violent offenders not being rehabilitated in prison, we should be more worried about release of the much larger number of citizen violent offenders.

The Amendments are unnecessary: The Ordinance explicitly says it does not apply to criminal offenses ("Unlawful" residence in the US is a civil, not criminal offense), and that "local law enforcement may continue to collaborate with federal authorities to protect public safety." (Read the law at http://tinyurl.com/nlgea6u )

Approved September 17, 2013
Gray Panthers of San Francisco Board
From: toreador103@aol.com [mailto:toreador103@aol.com]
Sent: Wednesday, September 18, 2013 9:58 AM
To: Board of Supervisors
Cc: Lee, Mayor
Subject: Avalos: Deliberately Destructive or just Clueless?

Dear Supervisors:

That San Francisco is a "sanctuary" for illegal aliens is bad enough. Preventing those accused of crimes from being detained for possible deportation is worse. And protecting even potentially violent criminals from being sent home is downright moronic. The loudly-expressed sentiments of the "crowd" in the Supervisor's chambers notwithstanding, San Francisco's compulsion to self-destruct was in full flower yesterday.

It seems necessary to remind Avalos et al that people who are in the U.S. illegally are, by definition, law-breakers. Those who favor keeping potentially violent illegal aliens in the country either want to destroy the country or are, more likely, unthinking buffoons. Kim and the other "compromisers" aren't much better.

When the Avalos's and Kim's of the world start getting their way, America's erstwhile unity, integrity, civility and sense of responsibility wane. God protect us from unthinking political hacks!

N Wong
A Gu
San Francisco
From: Catherine Groody [mailto:catherinegroody@gmail.com]  
Sent: Monday, September 16, 2013 12:03 PM  
To: Board of Supervisors  
Subject: Immigration reform

Board of Supervisors and David Campos,

The new immigration policy being touted by the Board of Sup. and various other city politicians is very deceptive. Allowing illegal immigrants with multiple felony convictions to take harbor in our city is just wrong. The true intention of immigration reform is being undermined, this reform was meant to help families who contribute, who work, who want to participate in school, work and city goverment without fear of retribution. Instead what we have are city politicians deceiving unknowing citizens, voters are not seeing the large picture because it is being kept hidden from them. Allowing convicted felons (not DV related), gang members and fugitives from other states to reside here carte blanche is a shame and I (as a taxpayer, voter and resident of San Francisco) will be paying to support this group of unsavory characters. This ony makes me want to move, I'll be reviewing my options. And certainly not voting for anyone involved in approving this current fiasco.

Sincerely,

Catherine Groody
Dear Supervisor Avalos,

Please find a letter in support of Detainer Ordinance Chapter 121, attached. Don't hesitate to contact me with any questions.

Best,

Tamara Barak Aparton
Communication and Policy Assistant
San Francisco Public Defender's Office
415-575-4390
tamara.aparton@sfgov.org
July 22, 2013

Supervisor John Avalos
City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Re: Detainer Ordinance Chapter 121 – SUPPORT

Dear Supervisor Avalos:

As the Public Defender of the City and County of San Francisco, I write in strong support of the Detainer Ordinance (amending Chapter 121 of the San Francisco Administrative Code) which will address the detrimental effects of San Francisco’s participation in the deeply problematic Secure Communities (S-Comm) deportation program. This reform will enhance public safety and protect the civil liberties of thousands of San Franciscans who happen to be immigrants.

Under S-Comm, a person’s fingerprints are electronically run through Immigration and Custom Enforcement’s (ICE’s) immigration database at the time of booking in the county jail. This allows ICE to identify noncitizens, including legal immigrants and permanent residents, and potentially subject them to deportation proceedings. Because it targets people at the time of arrest, Secure Communities ensnares those who will never be charged with a crime. Particularly vulnerable under this policy are people who have been subject to unconstitutional or erroneous arrests. My concerns echo those of officials across the country who have warned that S-Comm invites racial profiling by law enforcement.

The Detainer Ordinance will send a clear message to our diverse immigrant communities that in San Francisco, anyone may access the justice system and receive equal protection under the law, as guaranteed by the Fourteenth Amendment. The knowledge that we oppose any use of local law enforcement resources to enforce the broken federal immigration system will be an important step to mend trust and increase cooperation between immigrants and police. It will lead to more immigrants reporting crimes, seeking protection from domestic violence and serving as witnesses.

The Detainer Ordinance will also ease the unfair burden by which the program has saddled our local government by ending our city’s participation in the constitutionally questionable practice of holding people for extra time for ICE. Due process is undermined when people are held in jail for extra time, simply because of an ICE hold request.
S-Comm has led to the deportation of almost 100,000 Californians as of May 2013, which is more than any other state. In addition, more than 780 San Franciscans have been torn from their families through this program. Many are among the 25,000 people my office serves annually.

The Detainer Ordinance will not lead to violent criminals being turned loose onto our streets. Those who are convicted of serious crimes, with very few exceptions, remain in custody despite the ICE hold being removed due to high bail and many are sentenced to state prison. Complying with Secure Communities on a local level imperils only those arrested for minor offenses, many of whom will never be convicted of a crime. They are separated from families when transferred to immigration detention centers, often across the country, and then permanently torn apart through deportation.

As public defenders, my colleagues and I regularly come into contact with people who are wrongly arrested or detained with little evidence. Thus, we strongly support passage of local ICE hold reform.

Sincerely,

Jeff Adachi
San Francisco Public Defender

CC: Via Email: Board of Supervisors, Board Clerk, Angela Chan—Asian Americans Advocating Justice.

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San Francisco Due Process for All Ordinance

IN BRIEF
The Due Process for All Ordinance will affirm San Francisco’s role as a national leader in advancing policies that champion equal protection under the law for all, including our immigrant community members.

BACKGROUND
Secure Communities (S-Comm) is a misguided Immigration and Customs Enforcement (ICE) program that automatically sends fingerprints taken by local police at the point of arrest to federal immigration officials, with no regard for the basic principle of due process. Immigration officials can request that any individual, regardless of immigration status, be detained on an immigration hold, at local expense.

Federal case law, federal regulations and California’s Attorney General all confirm that responding to ICE’s hold requests is voluntary.¹

THE PROBLEM
70% of undocumented immigrants are less likely to contact law enforcement if they are victims of crime for fear of deportation.²

S-Comm Violates Basic Constitutional Principles
ICE hold requests deprive San Franciscans of their freedom without any due process of law. ICE hold requests are not reviewed or signed by a judge, and are not based on any legal standard, such as probable cause. That is why ICE holds have even been placed on US citizens. Operating unchecked, the program flies in the face of our most deeply held constitutional values—due process and equal protection for all.

S-Comm Is A Burden on Local Resources: Because ICE does not fully reimburse localities for participating in S-Comm, local jails bear the brunt of the costs of responding to hold requests triggered by the program.

California taxpayers spent an estimated $65 million annually to detain people for ICE.³

S-Comm Undermines Public Safety: Immigrant residents who are victims or witnesses to crime fear cooperating with police because any contact with law enforcement can result in separation from their families and deportation. This erosion of community trust in police makes it harder for law enforcement officers to conduct their duties and keep San Franciscans safe.

THE SOLUTION
The Due Process for All Ordinance will disentangle San Francisco’s law enforcement from federal immigration enforcement and restore due process protections for all individuals who have been arrested, including immigrants.

Under this ordinance, San Francisco law enforcement will no longer respond to ICE’s cruel and costly immigration hold requests.

This ordinance will end the extended detention and wrongful deportation of San Francisco’s aspiring citizens, including parents, children, domestic violence survivors and

¹ The federal regulation applying to immigration detainees clearly states in section (g), entitled “detainees in general” that “[t]he detainee is a request.” 8 C.F.R. § 287.7(c); see also Attorney General Kamala Harris, “Responsibilities of Local Law Enforcement Agencies Under Secure Communities,” Information Bulletin, Dec. 4, 2012 (“[m]igration detention are not compulsory. Instead, they are merely requests enforcement at the discretion of the agency holding the individual arrested.”).
workers. The ordinance will also free San Francisco from
the burden of responding to ICE hold requests and improve
trust between immigrant communities and local law
enforcement.

SUPPORT FOR THIS ORDINANCE cont.

Lawyers Committee for Civil Rights
Mujeres Unidas y Activas
National Lawyers Guild
Pangea Legal Services
People Organized to Win Employment Rights
San Francisco Domestic Violence Consortium
San Francisco Organizing Project
Young Workers United

Immigrant communities are part of the fabric of San
Francisco and S-Corral only serves to tear these
communities apart, at local taxpayers’ expense. The Due
Process for All Ordinance will protect all San Franciscans
by ending San Francisco’s participation in this irreparably
broken program.

SUPPORT FOR THIS ORDINANCE

Individually
Supervisor John Avalos, author
Supervisor London Breed, co-sponsor
Supervisor David Campos, co-sponsor
Supervisor David Chiu, co-sponsor
Supervisor Malia Cohen, co-sponsor
Supervisor Jane Kim, co-sponsor
Supervisor Eric Mar, co-sponsor
Supervisor Norman Yee, co-sponsor
Sheriff Ross Mirkarimi
Archbishop Salvatore Cordileone
975 Community Members

Organizations
Asian Americans Advancing Justice – Asian Law Caucus
Arab Organizing and Resource Center
Bill of Rights Defense Committee
California Immigrant Policy Center
Causa Justa: Just Cause
Central American Resource Center
Chinese for Affirmative Action
Community United Against Violence
Dolores Street Community Services
Immigrant Legal Resource Center
Irish Immigration Pastoral Center

FOR MORE INFORMATION

Angela Chan, Senior Staff Attorney
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Signed petition available at: http://org.cdnaction.com/registration/san-francisco-
MEMORANDUM

TO: Youth Commission

FROM: Derek Evans, Assistant Clerk

DATE: August 19, 2012

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS

The Board of Supervisors has received the following, which at the request of the Youth Commission is being referred as per Charter Section 4.124 for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File: 130764

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

Please return this cover sheet with the Commission’s response to Derek Evans, Clerk, Neighborhood Services and Safety Committee.

RESPONSE FROM YOUTH COMMISSION Date: ____________________

_____ No Comment

_____ Recommendation Attached

Chairperson, Youth Commission
Why other local governments are saying no to ICE holds

WASHINGTON, DC

Council member Phil Mendelson (D-At Large), chair of the public safety and judiciary committee.

Councilmember Mendelson said the legislation is needed to keep the federal government from “using local government for federal immigration enforcement.” “That works against community policing,” Mendelson said. “We want people who are victims to report crime, and we want witnesses to report crime.”


COOK COUNTY, ILLINOIS

Chicago Sun-Times Editorial:

“It’s a basic American legal principle: We don’t hold people in prison without a legal reason for doing so.”


SANTA CLARA COUNTY, CA
Supervisor Dave Cortese, Acting Public Defender Molly O’Neal, and Domestic Violence Advocacy Consortium director Cynthia Hunter.

“How would you feel if friends or family members were denied bail, or timely release from jail, even though a judge or jury acting within the judicial system had already approved their release? Given the separation of powers established by the Constitution, a legislative body such as the board should not be allowed to honor civil detainers that override the judicial powers of a judge or jury.

In the first year of the policy, organizations in our community coalition have seen a marked reduction of fear in immigrant communities.”

Introduction Form
By a Member of the Board of Supervisors or the Mayor

I hereby submit the following item for introduction (select only one):

☑ 1. For reference to Committee.
   An ordinance, resolution, motion, or charter amendment.

☐ 2. Request for next printed agenda without reference to Committee.

☐ 3. Request for hearing on a subject matter at Committee.

☐ 4. Request for letter beginning "Supervisor [Name] inquires"

☐ 5. City Attorney request.


☐ 7. Budget Analyst request (attach written motion).

☐ 8. Substitute Legislation File No. [Number]

☐ 9. Request for Closed Session (attach written motion).

☐ 10. Board to Sit as A Committee of the Whole.

☐ 11. Question(s) submitted for Mayoral Appearance before the BOS on [Date]

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

☐ Small Business Commission  ☐ Youth Commission  ☐ Ethics Commission

☐ Planning Commission  ☐ Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative

Sponsor(s):
Supervisor John Avalos

Subject:
Ordinance - Administrative Code - Due Process Ordinance on Immigration Detainers

The text is listed below or attached:

Signature of Sponsoring Supervisor: [Signature]

For Clerk's Use Only:

130764

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