

Ordinance No. _____

AN ORDINANCE ADDING ARTICLE LXV OF THE SAN DIEGO COUNTY CODE OF ADMINISTRATIVE ORDINANCES RELATING TO LAW ENFORCEMENT ACCESS TO COUNTY FACILITIES

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1. The Board of Supervisors finds and determines that the County is committed to ensuring the civil rights of all County residents. The purpose of this ordinance is to establish protections to ensure that County facilities and contracts are not utilized in a manner that facilitates discrimination, unlawful detention, or the criminalization of individuals based on protected characteristics, including immigration status, disability status, gender identity or expression, reproductive or gender-affirming healthcare history, or political or religious beliefs.

Section 2. Article LXV of the San Diego County Code of Administrative Ordinances is hereby added as follows:

ARTICLE LXV DUE PROCESS AND SAFETY IN COUNTY FACILITIES

SEC. 965 Purpose and Intent

It is the intent of this Division to demonstrate the County's commitment, through its actions and training of County employees and contractors, to ensure that County facilities, programs, and partnerships are not used to facilitate discrimination of any kind, violations of Constitutional rights, or unauthorized enforcement against vulnerable communities. It is further the intent to provide clear direction to County employees and contractors to comply with state and local protections safeguarding the rights of all individuals regardless of immigration status, gender identity or expression, reproductive healthcare history, disability status, or political or religious beliefs that recognize the fundamental rights to bodily autonomy, self-determination, privacy, freedom of expression, and equal treatment under the law.

SEC. 966 Definitions

For the purposes of this Division, defined terms appear in italics. The following definitions apply in this Division:

Agency means federal and state agencies, counties, cities, districts, local agencies, joint power authorities, non-profit corporations wholly owned by a public agency, and any quasi-public entity that the Board of Supervisors may designate by resolution.

County means the County of San Diego.

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County agreement means a contract for services, public works contract, a lease of County property, or a grant advertised and awarded by the County after the effective date of this Article to any person that is not an agency.

County facility means County property where the County exercises daily control over access to the real property, including offices, maintenance areas, operation yards, employee workplaces, restricted zones, construction sites, and administrative facilities. Daily control over access refers to facilities where access is limited by County to authorized individuals or based on scheduled hours, including buildings and outdoor facilities protected by fencing.

County property means real property that the County owns in fee or that is leased and occupied by the County.

Federal law enforcement agency personnel means any employee, contractor, or agent of a department or agency of the United States government who is engaged in law enforcement activity.

Gender affirming health care has the same meaning as in California Welfare and Institutions Code section 16010.2(b)(3)(A), as may be amended.

Gender affirming mental health care has the same meaning as in California Welfare and Institutions Code section 16010.2(b)(3)(B), as may be amended.

ICE access has the same meaning as in California Government Code section 7283(d) as may be amended.

Immigration enforcement has the same meaning as in California Government Code section 7284.4(f), as may be amended.

Joint law enforcement task force has the same meaning as in California Government Code 7284.4(g).

Law enforcement activity means any action conducted by government personnel or any individual acting under color of law for the purpose of enforcing criminal, civil, immigration, or regulatory laws, including federal laws and laws of other states. This includes surveillance, investigation, detention, questioning, arrest, execution of warrants, collection or sharing of personal data, or facilitation of legal process such as subpoenas or transfer requests.

Non-public area means any space on real property that is not generally accessible to the public.

Out-of-state law enforcement personnel means any law enforcement agent, officer, employee, attorney, investigator, or contractor acting under the authority of another state or its subdivisions who is engaged in law enforcement activity.

Private party acting under color of law enforcement authority means any individual or group not employed by a government agency who:

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- (a) Claims, implies, or presents themselves as having legal authority to conduct law enforcement activity;
- (b) Is contracted, deputized, or otherwise authorized by a federal agency or out-of-state jurisdiction to engage in law enforcement activity within California; or
- (c) Engages in surveillance, detention, questioning, or information gathering in a manner that imitates or substitutes for official law enforcement activity.

Protected personal activity means actions that an individual has the right to undertake free from undue governmental interference, discrimination, or criminalization under either federal or state law, including:

- (a) Reproductive healthcare services;
- (b) Gender affirming healthcare;
- (c) Gender affirming mental health care;
- (d) Exercising First Amendment rights, including expressing political or religious opinions;

Protected personal characteristics means an individual's actual or perceived attributes that are safeguarded from discrimination under state law, including:

- (e) Immigration or citizenship status;
- (f) Disability status;
- (g) Gender identity, gender expression, or transgender status;
- (h) Sexual orientation;
- (i) Race, ethnicity, national origin, or language; or
- (j) Marital or familial status;

Reproductive healthcare services has the same meaning as in California Civil Code section 1798.300(e), as may be amended.

SEC. 967 Access to County Facilities

Federal law enforcement agency personnel, out-of-state law enforcement personnel, and private parties acting under the color of law enforcement authority shall not be given access to any non-public area of a County facility for the purpose of carrying out law enforcement activities where the alleged criminal activity is a protected personal characteristic or protected personal activity unless access is required by law or by a judicially issued warrant or court order.

This section does not prohibit access to County facilities by federal law enforcement agency personnel or out-of-state law enforcement personnel in the following circumstances:

- (a) In response to an imminent threat to life or public safety pursuant to a narrowly tailored policy adopted by the Chief Administrative Officer; or
- (b) As part of an inspection under regulatory authority;

The Chief Administrative Officer shall report access to non-public areas of a County facility by any federal law enforcement agency personnel, out-of-state law enforcement

personnel, and private parties acting under the color of law enforcement authority for the purpose of carrying out law enforcement activities where the alleged criminal activity is a protected personal characteristic or protected personal activity to the Board of Supervisors in writing within three business days of the access.

~~(c) The requirements of this section shall be included in any agreement to provide services to the public on behalf of the County from non-County facilities.~~

SEC. 968 Guidelines for Upholding Civil Rights in County Operations

(a) Unless otherwise required by law, the County should not:

(1) Transmit or share data related to any protected personal characteristic or protected personal activity for law enforcement purposes, unless such transmission or sharing is necessary for law enforcement activity where the alleged criminal activity is not based on a protected personal characteristic or is not a protected personal activity and is part of a suspect, victim, or missing person description or is relevant to the crime being investigated.

(2) Participate in a joint operation, task force, or patrol that involves, in whole or in part, an immigration enforcement action or other law enforcement activity that specifically investigates a protected personal characteristic or protected personal activity as criminal activity.

(b) Section 968 does not prohibit:

(1) the County's participation in a joint law enforcement task force, if the task force is not related to investigating a protected personal characteristic or protected personal activity as criminal activity; or

(2) cooperation with federal law enforcement agency personnel or out-of-state law enforcement personnel in response to an imminent threat to life or public safety. The County's cooperation shall be narrowly tailored to respond to the imminent threat to life or public safety. If the alleged crime is a protected personal characteristic or protected personal activity, the County's cooperation shall be reported in writing to the Board of Supervisors as required under Section 970.1.

SEC. 9698 Contractor and Vendor Compliance

~~(a) Required Policy Adherence~~

For all County agreements advertised and executed on or after the effective date of this Division, contractors, lessees, and grantees must comply with the following requirements, where applicable shall include language requiring the following:

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- ~~(1)~~ (a) Compliance with all applicable State laws relating to cooperation with law enforcement;
- ~~(2)~~ (b) Maintaining any information relating to a protected personal characteristic or protected personal activity received or obtained as part of its performance of the County agreement confidential, and prohibiting the sharing or transmitting of such information to any third party unless required to do so under federal, State or local law, or to perform the County agreement;
- ~~(3)~~ (c) The provisions of subsections (a) and (b) to be included in any subcontracts entered into related to the performance of the County agreement;
- ~~(4)~~ (d) For agreements to operate County facilities or provide services to the public on behalf of the County from non-County facilities, compliance with section 967 and display of public-facing signage required by section 970, where applicable;
- ~~(5)~~ (e) For agreements to provide services to County residents or handle personal information of County residents, notice to the County within five business days of any request from federal law enforcement personnel, out-of-state law enforcement personnel, or a private party acting under the color of law enforcement authority for assistance with any law enforcement activity where the alleged criminal activity is a protected personal characteristic or protected personal activity.

~~(b) Exceptions~~

~~The Director of Purchasing and Contracting or the Director of General Services may waive the requirements of this Section 969 where contracting is necessary for the provision of essential services or to protect life or property, and where there is insufficient time to request an exception from the Board of Supervisors. A waiver must be reported to the Board of Supervisors within 30 days, and any contract executed pursuant to a waiver is limited to one year in duration.~~

SEC. 970 Notice Requirements

(a) Signage

The following requirements shall apply to any County facility providing services to the public which contains non-public areas:

- (1) The Chief Administrative Officer shall post signage at the public entrances to County facilities stating that access to non-public areas by Federal law enforcement agency personnel, out-of-state law enforcement personnel, and private parties acting under the color of law enforcement authority for the purpose of carrying out law enforcement activities where the alleged criminal activity is a protected personal characteristic or protected personal activity is prohibited without a judicial warrant or court order.

(b) Language and Format

Each department will ensure that required signage is posted containing the following language:

“NOTICE: This facility is protected by the San Diego Due Process and Safety Ordinance. Non-public areas may not be accessed by federal agents, out-of-state law enforcement, or private enforcement actors unless they present a judicially issued warrant or court order. You have the constitutional right to decline to speak with any such individuals without legal representation.”

The Chief Administrative Officer shall direct the appropriate size and font of signage and identify languages for translation. Spanish translation shall be included on each sign, with other languages accessible via prominently displayed QR code on each sign.

SEC. 970.1 Reporting Requirements

(a) The Chief Administrative Officer shall provide a written report to the Board of Supervisors by the end of each fiscal year with the following information from the preceding calendar year:

(1) A summary of the County’s participation in joint law enforcement task forces as described in California Government Code section 7284.6(c)(1).

(A) The report shall include the following information in a separate section for each joint law enforcement task force:

(i) The purpose of the task force.

(ii) The federal, state, and local law enforcement agencies involved.

(iii) The total number of arrests made during the reporting period.

(iv) The number of people arrested for immigration enforcement purposes.

(v) The number of San Diego County Sheriff officers officially assigned to the joint law enforcement task force and a general description of the types of investigations that officers participated in that year.

(vi) The total number of San Diego County Sheriff personnel hours, pre-operational briefings held at a County facility that immediately precede law enforcement action that involves contacting members of the public, and total amount of County funds, including salary costs, allocated to the joint law enforcement task force.

(vii) The number of case referrals between San Diego County Sheriff and the joint law enforcement task force.

(viii) A list of the law enforcement databases or data-sharing systems used in the course of the joint law enforcement task force, unless such information is exempt from public disclosure under federal or state law.

(B) The Chief Administrative Officer shall not include information in the report that would endanger the safety of a person involved in an investigation or the successful completion of the investigation or a related investigation, or the disclosure of which is prohibited or exempt under federal or state law.

(2) Any information required to be reported to the California Department of Justice under California Penal Code section 13777(a)(2) and all data and reports made publicly available

under Government Code section 12525.5(f) of the Racial and Identity Profiling Act of 2015 (RIPA). Disclosure of information under section 970.1 shall be consistent with California Government Code section 12525.5(d) and shall not result in the release of protected information, including personally identifiable information.

(3) A summary of any changes to federal or state law that affect the San Diego County Sheriff's ability to participate in a joint law enforcement task force.

(4) A summary of any known law enforcement activity by federal law enforcement agency personnel, out-of-state law enforcement personnel, or a private party acting under color of law enforcement authority involving any person for a protected personal characteristic or protected personal activity within the jurisdiction of the County. Section 970.1 is not intended to include investigations of criminal activity unrelated to a protected personal characteristic or protected personal activity when a protected personal characteristic or protected personal activity is part of a suspect description or may be relevant to the investigation of the underlying crime.

(5) A summary of the Transparent Review of Unjust Transfers and Holds (TRUTH) Act forum held by the County under California Government Code section 7283.1(d), including the place and time that the forum was held, and a general description of the information that was presented by the County, if during the reporting period, the County provided ICE access to a person in the custody of the San Diego County Sheriff.

(b) If the San Diego County Sheriff responds to a call for service related to law enforcement activity by federal law enforcement agency personnel, out-of-state law enforcement personnel, or a private party acting under color of law enforcement authority where the alleged crime is a protected personal characteristic or protected personal activity, the San Diego County Sheriff shall issue a publicly available incident report within three business days of the response. The report shall include: (1) the names of all agencies present; (2) whether a judicial warrant was presented by any agency to the San Diego County Sheriff; and (3) any available identifying information of the law enforcement personnel involved, such as badge numbers, and agency designations, or the private party acting under color of law enforcement authority.

(c) If the San Diego County Sheriff responds to a call or cooperates with federal law enforcement agency personnel or out-of-state law enforcement personnel in response to an imminent threat to life or public safety where the alleged crime is a protected personal characteristic or a protected personal activity, the San Diego County Sheriff shall report such cooperation in writing to the Board of Supervisors within three business days.

SEC. 971 Applicability

The requirements of this ordinance do not apply if waived by the Board of Supervisors, where compliance is expressly preempted by federal, State or local law, or to services required to be provided by a federal agency at a County facility, such as Customs and baggage inspection at County airports.

Section 3. This ordinance shall take effect and be in force thirty days after its passage, and before the expiration of fifteen days after its passage, a summary hereof shall be published once with the names of the members of this Board voting for and against it in the Daily Transcript, a newspaper of general circulation published in the County of San Diego.

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APPROVED AS TO FORM AND LEGALITY

DAMON M. BROWN, County Counsel

BY: Mark Day, Supervising Deputy County Counsel