

AN ORDINANCE PROTECTING THE LEGAL RIGHTS OF ALL COUNTY RESIDENTS, REGARDLESS OF NATIONALITY, PLACE OF BIRTH OR IMMIGRATION STATUS

WHEREAS, the Washington State Attorney General Bob Ferguson has provided Washington counties and cities with a document entitled *Guidance Concerning Immigration Enforcement*, which sets forth practices to help foster a relationship of trust between local agencies and immigrants and which encourages counties and cities to adopt ordinances which implement those practices.

WHEREAS, the ordinance set forth herein follows the *Guidance Concerning Immigration Enforcement*; and

WHEREAS, except for Native Peoples of the Northwest Coast and Salish Sea, we are all from somewhere else; and

WHEREAS, San Juan County (hereinafter "the County") benefits both culturally and economically from the increasing diversity of its population, especially in terms of race, ethnicity, religion, nationality, and sexual orientation; and

WHEREAS, a relationship of trust, respect, and open communication between County employees, elected officials and residents is essential to the County's core mission of ensuring public health, safety and welfare, and serving the needs and protecting the rights of everyone in the community; and

WHEREAS, the County aims to promote family unity and community security by reaffirming and clarifying the policies and procedures regarding immigration status that will continue to afford due process to all, NOW THEREFORE,

A. Employees of the County shall not engage in the certain activities:

1. Unless otherwise required by federal, state or County law, no County employee or elected official, whether paid in part or in full by the County, shall record information, inquire, or otherwise request specific documents or information about a person's civil immigration status, nationality or place of birth. Documents include but are not limited to:
 - a. passports;
 - b. alien registration cards;
 - c. work permits.
2. Neither the County Sheriff nor any employee of the Sheriff's Department or other local law enforcement officer shall stop, question, interrogate, investigate or arrest an individual based solely on any of the following:
 - a. actual or suspected civil immigration status, nationality, place of birth, race, inability to speak or understand English or to read or write; or
 - b. a Civil Immigration Warrant, an administrative warrant, or Civil Immigration Detainer whether it names a specific person or is general in nature unless accompanied by a Judicial Order.
3. County employees and elected officials shall become familiar with RCW 70.48.100 (confidentiality of jail records) and the applicable provisions in the Public Records Act that exempt personal information from disclosure or prohibit the disclosure of personal information which could be deemed to be an invasion of privacy as defined in RCW 42.56.050. County employees and elected officials shall not promise confidentiality if the information they request may be subject to disclosure under the law.
4. County employees and elected officials who are served with subpoenas, warrants, or requests for information about an individual from ICE or CBP or other federal immigration authorities, must assure that any such subpoena, warrant, or request that appears to be legal and/or enforceable (a) is signed by an Article III judge, (b) properly identifies the agency with authority to search, (c) correctly identifies the search location(s), (d) includes the correct date, and (e) has not expired. Any doubt regarding the enforceability of the subpoena, warrant, or request for information must be referred to the County Prosecuting Attorney, who will determine
 - a. whether the subpoena, warrant, or request for information fulfills all the aforesaid requirements, and
 - b. whether federal or state law prohibits providing the requested information, and
 - c. whether there is a basis upon which to object to the subpoena, warrant, or request for information or a basis upon which to force the requester to obtain a Judicial Order, and
 - d. whether there is another basis on which to refuse to provide the information, quash, or otherwise decline to comply with a subpoena, warrant, or request for information.
5. Where there is a basis to object to the subpoena, warrant, or request for information, or a basis to force the requester to obtain a Judicial Order, the County Prosecuting Attorney shall object to the subpoena, warrant, or request for information, shall force the requester to obtain a Judicial Order, shall attempt to quash the subpoena or warrant and shall otherwise make all reasonable attempts to prevent the requesting authority from obtaining the requested information.
6. Where there is no basis upon which the County Prosecuting Attorney can act as set forth in paragraph A.5 of this ordinance, unless prohibited by federal, state or county law, the County Prosecuting Attorney shall inform the person of the request.

B. Employees and elected officials of the County shall assist and cooperate with employees of immigration related federal programs only under specified circumstances.

1. Employees and elected officials of the County shall not participate in, nor shall County or local agency resources be used to create a federal registry, surveillance program, or County record which is based on or registers race, gender, sexual orientation, religion, ethnicity or national origin, or immigration status, even if individuals voluntarily offer such information.
2. The County Sheriff and/or the County Prosecuting Attorney shall consider and use pre-booking and pre-trial diversion practices and Law Enforcement Assisted Diversion, to the greatest extent possible, without regard to immigration status. In those circumstances in which a diversion program exists that does not require booking, it should be used.
3. Neither the Sheriff nor any employee of the County's Sheriff Department or any other local law enforcement officer shall perform the functions of a federal immigration officer or otherwise engage in the enforcement of federal immigration law under Title 8 of the United States Code.
4. Unless prohibited by law, County employees and elected officials shall not enter into any agreement with CBP, ICE, or the Department of Homeland Security under Section 287(g) of the Immigration and Nationality Act, or any similar agreement regarding County cooperation with federal immigration enforcement, without prior written authorization by the voters.

C. County employees and elected officials shall honor civil immigration hold requests or civil immigration detainers from ICE or CBP only under specified circumstances.

1. County employees and elected officials may respond affirmatively to a civil immigration detainer or hold request from ICE or CBP or any other Department of Homeland Security to detain or transfer an individual for immigration enforcement or investigation purposes for up to 48 hours only if:
 - a. the ICE or CBP request is accompanied by a Judicial Order; or
 - b. there is probable cause to believe that the individual has engaged in Class A felony, a violent Class B felony or a violent Class C and that such probable cause would warrant prolonging detention; or
 - c. there is probable cause to believe that the individual in custody is or has been engaged in terrorist activity.
2. Neither County employees nor elected officials shall provide ICE or CBP access to an individual in County custody or allow use of County facilities to question an individual if the sole purpose is enforcement of federal immigration law. This applies whether the individual is held in a San Juan County facility or in a county facility to which San Juan County has transferred the individual.
3. Upon receipt of an ICE or CBP civil immigration detainer, transfer, notification, or interview request, a county employee shall provide a copy of that request to the person named therein and inform the person of the County's intended response. The County shall provide individuals with the phone number of a non-profit agency which assists individual with immigration-related issues (such as the Northwest Immigrant Rights Project). The County shall also provide the individual with the opportunity to contact immigration attorney(s) and family members.

D. Court programs and services should be equally accessible to all individuals, without regard to immigration status.

Courts should request that ICE refrain from coming onto court property for the sole purpose of enforcing federal immigration laws and should encourage ICE to treat courthouses as sensitive locations.

1. Courts should not provide ICE with access to individuals or honor ICE requests for non-public, sensitive information about an individual unless otherwise required by law.
2. Courts should not inquire into the nationality, place of birth or immigration status of individuals except as necessary to carry out court functions, or if those facts are an element of the crime.
3. Courts should consider policies that require announcement of ICE presence in the courthouse. Courts should develop ways to increase accessibility to members of the public who may fear physically appearing in court based on ICE presence.

E. Nondiscriminatory Access to Benefits, Services and Opportunities

1. County employees and elected officials shall not inquire about or request proof of immigration status, place of birth or nationality when providing services or benefits, except where receipt of the services or benefits is contingent upon immigration status, or where inquiries are required by federal, state or local law.
2. All County applications, questionnaires, and interview forms used in relation to the provision of County benefits, opportunities, or services should be promptly reviewed by each County agency or department, and any question requiring disclosure of information related to citizenship, immigration status, or place of birth shall, in the agency or department's best judgment, either be deleted in its entirety or revised such that the disclosure is no longer required.
3. Individuals in the custody of the County shall be subject to the same booking, processing, release, and transfer procedures, policies, and practices of that agency regardless of actual or suspected immigration status, nationality, or place of birth.
4. The County shall attempt to avoid transferring any individual in its custody to another jurisdiction if such jurisdiction does not provide or agree to provide to that individual the same protections set forth in this Ordinance to that individual.

F. Severability

If any section, paragraph, sentence, clause, or phrase in this ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the remaining parts of the ordinance.

APPENDIX DEFINITIONS

"CBP" means the United States Customs and Border Protection, commonly known as the "border patrol" and shall include any successor agency charged with enforcing security at United States' borders

"ICE" means the United States Immigration and Customs Enforcement Agency and shall include any successor agency charged with the enforcement of federal civil immigration laws.

"Civil Immigration Warrant" or "Detainer" means an administrative warrant or detainer issued pursuant to 8 CFR Sec. 287.7, or other request by ICE or CBP for the detention of a person suspected of violating civil immigration law.

"Judicial Order" means an order issued by an Article III federal judge or a federal magistrate judge based on probable cause and that authorizes federal immigration authorities to take into custody the person who is the subject of the warrant. A Judicial Order does NOT include a Civil Immigration Warrant, administrative warrant or document signed only by ICE or CBP officials.