

Submitting a Proposed Ordinance sponsored by

TONI PRECKWINKLE, President and JESUS G. GARCIA, JOHN A. FRITCHEY, BRIDGET GAINER, JOAN PATRICIA MURPHY, EDWIN REYES, DEBORAH SIMS, ROBERT B. STEELE, and LARRY SUFFREDIN, and JEFFREY R. TOBOLSKI, County Commissioners

PROPOSED ORDINANCE

POLICY FOR RESPONDING TO ICE DETAINERS

WHEREAS, Cook County is a “Fair and Equal County for Immigrants,” as defined in 07-R-240; and

WHEREAS, there is ongoing confusion regarding the proper boundaries of the relationship between local law enforcement and Immigration and Customs Enforcement (“ICE”); and

WHEREAS, this is especially true in the context of ICE detainers, which are issued pursuant to 8 USC § 1226 or 8 USC § 1357(d), and used by the Department of Homeland Security (“DHS”) to advise local law enforcement agencies that DHS seeks custody of an individual presently in the custody of that agency; and

WHEREAS, 8 CFR § 287.7 expressly provides that ICE detainers are merely “requests” that local law enforcement advise DHS when the individual is due to be released, and that the agency continue holding the individual beyond the scheduled time of release for up to 48 hours, excluding weekends and federal holidays, in order for ICE to arrange to assume custody; and

WHEREAS, due to troubling inconsistencies in ICE policies, many local law enforcement agencies erroneously believe ICE detainers are mandatory and that local law enforcement agencies are legally required to comply; and

WHEREAS, ICE detainers are generally issued before a finding of probable cause that an individual is deportable, and have even been imposed on U.S. Citizens by mistake; and

WHEREAS, ICE detainers are routinely imposed on individuals without any criminal convictions or whose cases are dismissed, but the federal government only reimburses part of the costs associated with ICE detainers, if there is a written agreement with the State or local subdivision of a State; and

WHEREAS, ICE will not indemnify local agencies for costs or liability incurred as a result of wrongful detainers; and

WHEREAS, it costs Cook County approximately \$43,000 per day to hold individuals “believed to be undocumented” pursuant to ICE detainers, and Cook County can no longer afford to expend taxpayer funds to incarcerate individuals who are otherwise entitled to their freedom; and

WHEREAS, the enforcement of immigration laws is a responsibility of the federal government; and

WHEREAS, ICE detainers encourage racial profiling and harassment; and

WHEREAS, having the Sheriff of Cook County participate in the enforcement of ICE detainers places a great strain on our communities by eroding the public trust that the Sheriff depends on to secure the accurate reporting of criminal activity and to prevent and solve crimes; and

WHEREAS, by means of this ordinance, Cook County joins states, cities, and counties across the nation that are informed about the discretionary nature of ICE detainers and refuse to enforce them, except in situations where federal reimbursement may be available.

NOW, THEREFORE, BE IT ORDAINED, by the Cook County Board of Commissioners, that Chapter 46 Law Enforcement, Sec. 46-37 of the Cook County Code is hereby enacted as follows:

Sec. 46-37. Policy for responding to ICE detainers.

(a) The Sheriff of Cook County shall decline ICE detainer requests unless there is a written agreement with the federal government by which all costs incurred by Cook County in complying with the ICE detainer shall be reimbursed.

(b) Unless ICE agents have a criminal warrant, or County officials have a legitimate law enforcement purpose that is not related to the enforcement of immigration laws, ICE agents shall not be given access to individuals or allowed to use County facilities for investigative interviews or other purposes, and County personnel shall not expend their time responding to ICE inquiries or communicating with ICE regarding individuals’ incarceration status or release dates while on duty.

(c) There being no legal authority upon which the federal government may compel an expenditure of County resources to comply with an ICE detainer issued pursuant to 8 USC § 1226 or 8 USC § 1357(d), there shall be no expenditure of any County resources or effort by on-duty County personnel for this purpose, except as expressly provided within this Ordinance.

(d) Any person who alleges a violation of this Ordinance may file a written complaint for investigation with the Cook County Sheriff’s Office of Professional Review.

Effective Date: This ordinance shall be in effect immediately upon adoption.