

RESOLUTION

NO. R-13-164

CITY HALL: May 16, 2013

BY: COUNCILMEMBERS CANTRELL, GRAY AND GUIDRY

WHEREAS, federal regulation, specifically Title 8, Part 287, Section 287.7, Subsection (a), authorizes a federal immigration officer to issue a “Form I-247 Immigration Detainer” to a local law enforcement agency; and

WHEREAS, this federal regulation, specifically Title 8, Part 287, Section 287.7, Subsection (d), contemplates that the local law enforcement agency, upon issuance of the Form I-247 Immigration Detainer for a particular person, will detain that person for up to 48 additional hours, excluding weekends and holidays, after the point when there is no longer any local law enforcement basis for detention; and

WHEREAS, in practice, the issuance of a Form I-247 Immigration Detainer, and the anticipation of additional detention pursuant thereto contemplated by Subsection (d) of Section 287.7, often results in the continued detention – in some cases for far longer than 48 hours – of individuals that would otherwise be able to secure release from custody by posting bail via commercial surety in an amount deemed appropriate by a local judge; and

WHEREAS, this federal regulation, specifically Title 8, Part 287, Section 287.7, Subsection (e), explicitly states that the federal government is not required to compensate the local law enforcement agency for any costs associated with additional detention incurred pursuant to, or as a result of, the issuance of a Form I-247 Immigration Detainer; and

WHEREAS, the federal agency charged with immigration enforcement, Immigration and Customs Enforcement (ICE), has confirmed in writing that ICE neither reimburses nor indemnifies against liability a local law enforcement agency detaining an individual pursuant to a Form I-247 Immigration Detainer; and

WHEREAS, multiple studies have found that issuance of and compliance with Form I-247 Immigration Detainers have increased the average jail stay of affected individuals by dozens of days and consequently increased annual detention costs by millions of dollars; and

WHEREAS, unlike a traditional arrest warrant, a Form I-247 Immigration Detainer may be issued by a federal immigration enforcement agent without any judicial scrutiny, established standard of proof, or finding of probable cause; and

WHEREAS, a recent report by the Transactional Records Access Clearinghouse at Syracuse University found that during a 50-month period covering Fiscal Year 2008 through the start of Fiscal Year 2012, ICE issued Form I-247 Immigration Detainers for over 8,000 U.S. citizens and over 28,000 Legal Permanent Residents; and

WHEREAS, issuance of and compliance with Form I-247 Immigration Detainers may impose significant adverse effects on individuals, families, and communities that make vital contributions to and constitute an integral part of the great City of New Orleans; and

WHEREAS, this federal regulation, specifically Title 8, Part 287, Section 287.7, Subsection (a), explicitly characterizes a Form I-247 Immigration Detainer as a “request”; and

WHEREAS, in response to a formal letter of inquiry from County Counsel of the County of Santa Clara, regarding the question of whether “localities are required to hold individuals pursuant to Form I-247” or whether “detainers [are] merely requests with which a county could legally decline to comply,” an Assistant Director at ICE stated that “ICE views an immigration detainer as a request...”; and

WHEREAS, in the case of *Printz v. United States*, 521 U.S. 898, 935 (1997), the United States Supreme Court declared that the principles of federalism embodied in the Tenth Amendment to the United States Constitution prohibits Congress from directly commandeering local law enforcement “to administer or enforce a federal regulatory program”; and

WHEREAS, in recent years, cities and states across the country - including Cook County, Illinois; Santa Clara County, California; Milwaukee County, Wisconsin; Multnomah County, Oregon; San Francisco County, California; San Miguel County, New Mexico; the District of Columbia; New York City; Los Angeles; and the State of Connecticut – have exercised their federal constitutional right to limit compliance with Form I-247 Immigration Detainer requests in a manner consistent with local interests and values; and

WHEREAS, the City of New Orleans is responsible for funding the maintenance and operation of local detention facilities; and

WHEREAS, the Orleans Parish Sheriff’s Office is responsible for operating local detention facilities; and

WHEREAS, the Mayor of the City of New Orleans has recently warned the Council of the City of New Orleans that the City of New Orleans presently faces the prospect of additional expenditures to operate the local jail that may have adverse fiscal and budgetary impacts on other vital city services and priorities; and

WHEREAS, the Council of the City of New Orleans is committed to working in close collaboration with the Orleans Parish Sheriff’s Office to ensure that scarce local taxpayer dollars appropriated for local law enforcement purposes are spent on the work of local law enforcement and in a manner that furthers local values and interests; **NOW THEREFORE**

THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY RESOLVES, That the Orleans Parish Sheriff is formally urged to:

- 1.) Carefully examine its policies and practices related to its voluntary compliance with Form I-247 Immigration Detainer requests; and
- 2.) Determine under what circumstances, if any, it serves local law enforcement interests to comply with a voluntary Form I-247 Immigration Detainer request to detain an individual beyond the point when there exists any independent local law enforcement basis for the detention, without any compensation for the associated costs or indemnification for the associated liabilities; and
- 3.) Upon such examination and determination, either:
 - A) adopt a formal, clear, public, written policy of not honoring voluntary Form I-247 Immigration Detainer requests; or
 - B) Present to the Council of the City of New Orleans, for its consideration and review, a formal, clear, public, written policy enumerating the circumstances under which voluntary Form I-247 Immigration Detainer requests will be honored, along with a full accounting of all anticipated expenses associated with said policy to be paid by appropriations from the Council of the City of New Orleans.

THE FOREGOING RESOLUTION WAS READ IN FULL, THE ROLL WAS CALLED ON
THE ADOPTION THEREOF AND RESULTED AS FOLLOWS:

YEAS:

NAYS:

ABSENT:

AND THE RESOLUTION WAS ADOPTED.