



Office of the City Manager

ACTION CALENDAR
October 30, 2012

To: Honorable Mayor and Members of the City Council
From: Christine Daniel, City Manager
Submitted by: Michael Meehan, Chief of Police
Subject: Consideration of Revisions to Policy Regarding Immigration Detainers in the Berkeley Jail

RECOMMENDATION

Review and comment on an amended policy drafted pursuant to the Council’s direction at its June 19, and September 18, 2012 meetings regarding Immigration Detainers (General Order J-1 [139]).

FISCAL IMPACT OF RECOMMENDATION

None

CURRENT SITUATION AND ITS EFFECTS

At its June 19, 2012 meeting, the City Council provided comments regarding a number of law enforcement policies which included Immigration Detainers as they relate to the Berkeley Jail. The City Council discussed aspects of General Order J-1 (139) at its September 18, 2012 meeting and decided to reconvene on the matter after further study. The following amended policy is responsive to Councilmember Jesse Arreguin’s June 19, 2012 recommendation, the ACLU September 18, 2012 recommendation, and the Santa Clara County Civil Immigration Detainer Policy in all but one point as outlined below. The amended Berkeley Police Department General Order J-1 (139) is submitted for City Council review and comment at this meeting.

Amended Policy

Item 1: General Order J-1 (139) – Jail Regulations

The Council directed staff to review policy from Santa Clara County regarding ICE detainers and modify as needed for the City of Berkeley. To this end the Department has amended General Order J-1, Section 139 in its entirety to incorporate language from the Santa Clara County Civil Immigration Detainer Policy. The Department also incorporated suggested language recommended by the ACLU on September 18, 2012. Minor modifications were made to the Santa Clara County language, most significantly due to the fact the Santa Clara County Jail holds prisoners who serve their post-

conviction sentences at that institution, while the Berkeley Jail is a temporary holding facility.

The police department's previous General Order J-1 (139) stated:

139 – Jail staff should not knowingly release a prisoner with an active detainer (i.e. warrant).

Prior policy did not address Immigration Detainers and directed staff to honor all detainer requests.

The key highlights of the amended policy include:

- The Department will exercise its discretion to honor Immigration Detainer requests if the individual is currently in custody pursuant to an arrest for a serious or violent felony*and the individual:
 - a. has been convicted of a homicide crime; or
 - b. has been convicted of a serious or violent felony within 10 years of the request; or
 - c. has been released after having served a sentence for a serious or violent felony within 5 years of the request.
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- Not permitting ICE agents access to individuals or allow them the use of City of Berkeley facilities or personnel for investigative or administrative purposes.
- Staff did not include an exclusion for those under 18 years of age, as the Department is now only honoring holds for the most serious and violent felonies, regardless of age. The Department believes public safety is best served by focusing on the criminal behavior and threat to the community, rather than the age of the detainee.
- Staff did not include the language requiring a prior agreement with the federal government to reimburse costs, as this would necessitate a release of all serious and violent felons described in this policy.

**Serious violent felonies include felonies listed in Section 1192.7 and 667.5 of the Penal Code (See Attachment 5, Penal Code Sections 1192.7 and 667.5)*

Therefore, in accordance with the Council's direction, amended language will replace the current Paragraph 139 of General Order J-1 (see Attachment 1, General Order J-1 Section 139).

BACKGROUND

On February 14, 2012, Council approved the remaining MOUs for 2011 between the Berkeley Police Department and NCRIC, UASI, and the University of California Police Department pursuant to the Berkeley Municipal Code section 2.04.150. Additionally,

Council asked the City Manager and the Police Review Commission (PRC) to return to Council regarding several MOU issues set forth in Councilmember Arreguin's February 14, 2012 submittal to the Council.

Thereafter, on June 19, 2012, a Special Meeting was held regarding the MOUs. At the conclusion, Council directed staff to establish a process for City Council approval of grant applications to UASI. Council also directed staff to return in September with a new policy regarding submitting SARs to NCRIC, and amended policies regarding Immigration Detainers, Criminal Intelligence, and Mutual Aid.

The Council reconvened on this matter on September 18, 2012. All above listed items were approved with the exception of General Order J-1 (139) Immigration Detainers, which was held over for further study.

RATIONALE FOR RECOMMENDATION

The policy discussed above is responsive to the Council's direction in June and September, with additional key contributions from stakeholders.

ALTERNATIVE ACTIONS CONSIDERED

Alternatives were addressed in prior reports.

CONTACT PERSON

Michael K. Meehan, Chief of Police, 981-5700

Attachments:

1: General Order J-1 Section 139 Immigration Detainers

ATTACHMENT 1

BERKELEY POLICE DEPARTMENT

DATE REVISED: TBD

GENERAL ORDER J-1

139- It is the policy of the Berkeley Police Department to honor civil detainer requests from the United States Immigration and Customs Enforcement (ICE) by holding detainees for an additional 24-hour period after they would otherwise be released in accordance with the following policy.

1. Upon written request by an Immigration Customs and Enforcement (ICE) agent to detain a Berkeley Jail inmate for suspected violations of federal civil immigration law, the Berkeley Police Department will exercise its discretion to honor the request if the individual is currently in custody pursuant to an arrest for a serious or violent felony and the individual:
 - a. has been convicted of a homicide crime; or
 - b. has been convicted of a serious or violent felony within 10 years of the request; or
 - c. has been released after having served a sentence for a serious or violent felony within 5 years of the request.
2. For purposes of this policy, a serious felony is any felony listed in subdivision (c) of Section 1192.7 of the Penal Code and a violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal Code. This includes out-of-state convictions, if the Berkeley Jail has been informed by a law enforcement agency, either directly or through a criminal justice database, that the individual has been convicted of serious or violent offense, which, if committed in this state, would have been punishable as a serious or violent felony.
3. Except as otherwise required by this policy or unless ICE agents have a criminal warrant, or City of Berkeley 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 be allowed to use City of Berkeley facilities for investigative interviews or other purposes, and City of Berkeley personnel shall not expend City time or resources responding to ICE inquires or communicating with ICE regarding individuals' incarceration status or release dates.

* Entire text is new