A BILL FOR AN ORDINANCE

RELATING TO LAW ENFORCEMENT.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Findings and purpose.

The purpose of this ordinance is to limit the enforcement of federal immigration laws by the Honolulu Police Department ("HPD"). The City Council finds that the City and County of Honolulu ("City") is home to people of diverse ethnic, racial, and national backgrounds, including immigrants who are valuable and important members of our community. It is essential to the public safety of all residents that there is a relationship of trust and cooperation among all members of the community, including immigrants, and the HPD. This relationship, essential to "community policing," is undermined when local law enforcement agencies voluntarily act at the request of federal immigration officials to enforce federal immigration laws.

SECTION 2. Chapter 2 ("The Mayor and Executive Agencies – Additional Powers, Duties and Functions"), Revised Ordinances of Honolulu 1990, is amended by adding a new article, to be appropriately designated by the Revisor of Ordinances and to read as follows:

"Article __. Hookipa Welcoming Policy

Sec. 2-___.1 Definitions.

As used in this chapter:

"Administrative warrant" means a document issued by the federal agency charged with the enforcement of federal immigration law that is used as a non-criminal, civil warrant for immigration purposes.

"CBP" means United States Customs and Border Protection, a component of the United States Department of Homeland Security, and includes any successor agency charged with the enforcement of civil immigration laws.

"Citizenship or immigration status" means all matters regarding questions of citizenship of the United States or any other county, or the authority of a person to reside in or otherwise be present in the United States.

"Eligible for release from custody" means that the individual may be released from custody because one of the following conditions has occurred:
(1) All criminal charges against the individual have been dropped or dismissed;

(2) The individual has been acquitted of all criminal charges filed against him or her;

(3) The individual has served all of the time required for his or her sentence;

(4) The individual has posted a bond, or has been released on his or her own recognizance;

(5) The individual has been referred to pre-trial diversion services; or

(6) The individual is otherwise eligible for release under state or local law.

"ICE" means United States Immigration and Customs Enforcement, a component of the United States Department of Homeland Security, and includes any successor agency charged with the enforcement of civil immigration laws.

"Immigration detainer" or "civil immigration warrant" means an official request issued by ICE, or other federal agency charged with the enforcement of civil immigration laws, to another federal, state, or local law enforcement agency to provide notice of release or maintain custody of an individual suspected of violating civil immigration law, pursuant to Title 8, Code of Federal Regulations, Section 287.7.

"Judicial warrant" means a warrant based on probable cause and issued by a U.S. Constitution Article III federal judge or a federal magistrate judge that authorizes federal immigration authorities to take into custody the individual who is the subject of the warrant. "Judicial warrant" does not include a civil immigration warrant, administrative warrant, or other document signed only by ICE or CBP officials.

"Notification request" means a non-mandatory request issued by an authorized federal immigration officer to a local law enforcement official asking for notification to the authorized immigration officer of an individual's release from local custody prior to the release of an individual from local custody. A notification request may also include informal requests for release information by a federal agency charged with enforcement of the federal immigration law.

"Personal information" means any confidential, identifying information about an individual, including, but not limited to, home or work contact information, and family or emergency contact information.
"Police department" or "department" means the Honolulu police department and any officer of the Honolulu police department authorized to enforce criminal laws, arrest individuals, and maintain custody of individuals in temporary detention facilities.

Sec. 2-2. Certain activities solely for the purpose of enforcing federal immigration laws.

(a) The police department may not stop, question, interrogate, investigate, or arrest an individual based solely upon:

(1) Actual or suspected immigration or citizenship status; or

(2) An immigration detainer, civil immigration warrant, or administrative warrant, in the individual's name, including those identified in the National Crime Information Center database.

(b) The police department may not inquire about the immigration status of an individual, including a crime victim, a witness, or an individual who calls or approaches the police seeking assistance, unless necessary to investigate criminal activity by that individual; and

(c) The police department may not perform the functions of a federal immigration officer or otherwise engage in the enforcement of federal immigration law, including pursuant to Title 8, United States Code, Section 1357(g).

Sec. 2-3. Prohibition against honoring detainer requests--Exceptions.

(a) The police department may not comply with an immigration detainer, civil immigration warrant, or administrative warrant from ICE or CBP to detain or transfer an individual for immigration enforcement or investigation purposes; provided that the police department may respond affirmatively if the request is accompanied by a judicial warrant or as set forth in subsection (b).

(b) The police department may continue to detain an individual, for up to 48 hours after that individual becomes eligible for release from custody, on an immigration detainer, civil immigration warrant, or administrative warrant, in the absence of a judicial warrant, provided that:

(1) The individual has been convicted of a felony within five years prior to the date of the official request;
(2) The individual has been convicted as a repeat offender of any misdemeanor specified in HRS Section 706-606.5(5) within five years prior to the date of the official request; or

(3) The individual has been arrested for a felony and a judge has made a finding of probable cause pursuant to HRS Section 805-7.

Sec. 2-4 Prohibition against honoring requests for information--Exceptions.

(a) The police department may not comply with an ICE or CBP notification request or request for non-public information about an individual, including but not limited to information about an individual's release, home address, or work address, except as set forth in the following subsections.

(b) The police department may comply with a notification request or non-public information request in the following circumstances:

(1) The information request is accompanied by a judicial warrant;

(2) The individual has been convicted of a felony within five years prior to the date of the request;

(3) The individual has been convicted as a repeat offender of any misdemeanor specified in HRS Section 706-606.5(5) within five years prior to the date of the request; or

(4) The individual has been arrested for a felony and a judge has made a finding of probable cause pursuant to HRS Section 805-7.

(c) The police department shall limit the information collected from individuals concerning immigration or citizenship status to that necessary to perform its duties.

(d) Nothing in this section prohibits the police department from:

(1) Sending to or receiving from any local, state, or federal agency, information regarding an individual's country of citizenship or a statement of the individual's immigration status pursuant to Title 8, United States Code, Section 1373;
(2) Disclosing information where disclosure of such information is otherwise permitted by state law or required pursuant to subpoena or court order; or

(3) Disclosing information about an individual's juvenile arrests or delinquency or youthful offender adjudications, where disclosure of such information about the individual is otherwise permitted by state law or required pursuant to subpoena or court order.

Sec. 2-.__.5 Prohibition against providing access to individuals in custody for questioning or interviewing principally for immigration enforcement purposes.

The police department may not provide ICE or CBP with access to an individual in the department's custody or the use of the department's facilities to question or interview such individual if the principal purpose of ICE or CBP is enforcement of federal immigration law, unless:

(1) The individual requests to meet with ICE or CBP;

(2) The access request is accompanied by a judicial warrant;

(3) The individual has been convicted of a felony within five years prior to the date of the access request;

(4) The individual has been convicted as a repeat offender of any misdemeanor specified in HRS Section 706-506.5(5) within five years prior to the date of the access request; or

(5) The individual has been arrested for a felony and a judge has made a finding of probable cause pursuant to HRS Section 805-7.

Sec. 2-.__.6 Due process rights--Federal immigration enforcement requests.

(a) The police department may not delay bail or the release from custody of an individual upon posting of bail solely because of the individual's immigration or citizenship status; an immigration detainer, civil immigration warrant or administrative warrant; or any ICE or CBP request for notification about, transfer of, detention of, or interview or interrogation of that individual for immigration enforcement purposes.
(b) Upon receipt of an ICE or CBP detainer, transfer, release notification, interview or interrogation request, the police department will provide a copy of that request to the individual named therein and inform the individual whether the police department will comply with the request before communicating its response to the requesting agency.

(c) Individuals in the custody of the police department must be subject to the same booking, processing, release, and transfer procedures, policies, and practices regardless of actual or suspected citizenship or immigration status.

Sec. 2-___.7 Prohibition on use of public resources.

(a) The police department may not use moneys, facilities, property, equipment, or personnel of the department to investigate, enforce, or assist in the investigation or enforcement of any federal program requiring registration of individuals on the basis of race, gender, sexual orientation, religion, ethnicity, or national origin.

(b) The police department shall make good faith efforts to seek federal reimbursement for all costs incurred in continuing to detain an individual, after that individual becomes eligible for release from custody, in response to a civil immigration detainer.

Sec. 2-___.8 Access to benefits and services.

The police department may not inquire about or request proof of immigration status or citizenship when providing services or benefits, except where the receipt of such services or benefits are contingent upon the individual's immigration or citizenship status or where inquiries are otherwise lawfully required by federal, state, or local laws.

Sec. 2-___.9 Data collection.

(a) The police department shall record, solely to create the report described in subsection (b), the following information for each immigration detainer, release notification, transfer, questioning or interview, or interrogation request received from ICE or CBP:

(1) The subject individual's race, gender, and place of birth;

(2) Date and time that the subject individual was taken into the police department's custody, the location where the individual was held, and the arrest charges;
(3) Date and time of the police department's receipt of the request;

(4) The requesting agency;

(5) Immigration or criminal history indicated on the request form, if any;

(6) Whether the request was accompanied by any documentation regarding immigration status or proceedings such as a judicial warrant;

(7) Whether a copy of the request was provided to the individual and, if so, the date and time of notification;

(8) Whether the individual consented to the request;

(9) Whether the individual requested to meet with ICE or CBP;

(10) Whether the individual requested to confer with counsel regarding the request;

(11) The police department's response to the request, including any decision not to fulfill the request;

(12) If applicable, the date and time that ICE or CBP took custody of, or was otherwise given access to, the individual; and

(13) The date and time of the individual's release from the police department's custody.

(b) The police department shall provide an annual report to the council regarding the information collected under subsection (a) in an aggregated form that is stripped of all personal identifiers in order that the community may monitor the police department's compliance with all applicable laws.
SECTION 3. This ordinance takes effect on January 1, 2020.

INTRODUCED BY:

DATE OF INTRODUCTION:

MAY 30 2019
Honolulu, Hawaii

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of ______________, 20 ___.

KIRK CALDWELL, Mayor
City and County of Honolulu