LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2011

_____

No. 62

_____

Introduced by Council Members Mark-Viverito, the Speaker (Council Member Quinn), Dromm, Foster, Brewer, Chin, Jackson, Koslowitz, Lappin, Mendez, Palma, Rodriguez, Rose, Barron, Gonzalez, Ferreras, Levin, Comrie, Vann, Cabrera, Dickens, Arroyo, James, Van Bramer, Eugene, Reyna, Seabrook, Sanders, Rivera, Crowley, Koppell, Williams, Lander, Garodnick, Wills, Mealy, Vacca, Weprin, Gennaro and Koo

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to persons not to be detained.

Be it enacted by the Council as follows:

Section 1.   Chapter 1 of Title 9 of the administrative code of the city of New York is amended by adding a new section 9-131 to read as follows:

§ 9-131.   Persons not to be detained. a. Definitions. For the purposes of this section, the following terms shall have the following meanings:

1.   "Civil immigration detainer" shall mean a detainer issued pursuant to 8 C.F.R. 287.7.

2.   "Convicted of a crime" shall mean a final judgment of guilt entered on a misdemeanor or felony charge in any of the criminal courts of the state of New York, as defined in section 10.10 of the criminal procedure law, or any other court of competent jurisdiction in the United States.   Persons adjudicated as youthful offenders, pursuant to article 720 of the criminal procedure law or a comparable provision of federal law or the law of another state, or juvenile delinquents, as defined by section 301.2(1) of the family court act or a comparable provision of

federal law or the law of another state, shall not be considered convicted of a crime.

3.   "Department" shall mean the New York city department of correction and shall include all officers, employees and persons otherwise paid by or acting as agents of the department.

4.   "Federal immigration authorities" shall mean any officer, employee or person otherwise paid by or acting as an agent of United States immigration and customs enforcement or any division thereof or any other officer, employee or person otherwise paid by or acting as an agent of the United States department of homeland security who is charged with enforcement of the civil provisions of the immigration and nationality act.

5.   "Pending criminal case" shall mean a case in any of the criminal courts of the state of New York, as defined in section 10.10 of the criminal procedure law, or any other court of competent jurisdiction in the United States, excluding the family court of the state of New York or a comparable court in another jurisdiction in the United States, where judgment has not been entered and where a misdemeanor or felony charge is pending.   Any individual whose case is disposed of with an adjournment in contemplation of dismissal pursuant to section 170.55 or 170.56 of the criminal procedure law or a comparable provision of federal law or the law of another state shall not be deemed to be a defendant in a pending criminal case.   A case in which the highest charge is a violation or a non-criminal infraction, including a case in which an individual has been sentenced to conditional discharge for committing a violation or a non-criminal infraction pursuant to section 410.10 of the criminal procedure law or a comparable provision of federal law or the law of another state, shall not be deemed to be a pending criminal case.

6.   "Terrorist screening database" shall mean the United States terrorist

watch list or any similar or successor list maintained by the United States.

b. Prohibition on honoring a civil immigration detainer. 1. The department shall not honor a civil immigration detainer by:

i. holding an individual beyond the time when such individual would otherwise be released from the department's custody, except for such reasonable time as is necessary to conduct the search specified in paragraph two of this subdivision, or

ii. notifying federal immigration authorities of such individual's release.

2. Paragraph one of this subdivision shall not apply when:

i. a search, conducted at or about the time when such individual would otherwise be released from the department's custody, of state and federal databases, or any similar or successor databases, accessed through the New York state division of criminal justice services e-JusticeNY computer application, or any similar or successor computer application maintained by the city of New York or state of New York, indicates that such individual:

A. has been convicted of a crime;

B. is a defendant in a pending criminal case;

C. has an outstanding criminal warrant in the state of New York or another jurisdiction in the United States;

D. is identified as a known gang member in the database of the national crime information center or any similar or successor database maintained by the United States; or

E. is identified as a possible match in the terrorist screening database.

ii. the search conducted pursuant to subparagraph i of this paragraph indicates, or the department has been informed by federal immigration authorities, that such individual:

A. has an outstanding warrant of removal issued pursuant to 8 C.F.R. 241.2; or

B. is or has previously been subject to a final order of removal pursuant to 8 C.F.R. 1241.1.

3. Nothing in this section shall affect the obligation of the department to maintain the confidentiality of any information obtained pursuant to paragraph two of this subdivision.

c. No conferral of authority. Nothing in this section shall be construed to confer any authority on any entity to hold individuals on civil immigration detainers beyond the authority, if any, that existed prior to the enactment of this section.

d. No conflict with existing law. This local law supersedes all conflicting policies, rules, procedures and practices of the city of New York. Nothing in this local law shall be construed to prohibit any city agency from cooperating with federal immigration authorities when required under federal law. Nothing in this local law shall be interpreted or applied so as to create any power, duty or obligation in conflict with any federal or state law.

e. No private right of action. Nothing contained in this section or in the administration or application hereof shall be construed as creating any private right of action on the part of any persons or entity against the city of New York or the department.

f. Reporting. No later than September 30, 2012 and no later than September 30 of each year thereafter, the department shall post a report on the department website that includes the following information for the preceding 12 month period:

1. the number of individuals held pursuant to civil immigration detainers beyond the time when such individual would otherwise be released from the department's custody;

2. the number of individuals transferred to the custody of federal immigration authorities pursuant to civil immigration detainers;

3. the number of individuals transferred to the custody of federal immigration

4

authorities pursuant to civil immigration detainers who had at least one felony conviction;

4. the number of individuals transferred to the custody of federal immigration authorities pursuant to civil immigration detainers who had at least one misdemeanor conviction but no felony convictions;

5. the number of individuals transferred to the custody of federal immigration authorities pursuant to civil immigration detainers who had no misdemeanor or felony convictions;

6. the number of individuals transferred to the custody of federal immigration authorities pursuant to civil immigration detainers who had no misdemeanor or felony convictions and were identified as known gang members in the database of the national crime information center or a successor database maintained by the United States;

7. the number of individuals transferred to the custody of federal immigration authorities pursuant to civil immigration detainers who had no misdemeanor or felony convictions and were identified as possible matches in the terrorist screening database;

8. the number of individuals transferred to the custody of federal immigration authorities pursuant to civil immigration detainers who had no misdemeanor or felony convictions and were identified as both possible matches in the terrorist screening database and known gang members in the database of the national crime information center or a successor database maintained by the United States;

9. the number of individuals transferred to the custody of federal immigration authorities pursuant to civil immigration detainers who had no misdemeanor or felony convictions and were defendants in a pending criminal case;

10. the amount of state criminal alien assistance funding requested and received

from the federal government; and

11. the number of individuals for whom civil immigration detainers were not honored pursuant to subdivision b of this section.

g. For the purpose of this section, any reference to a statute, rule, or regulation shall be deemed to include any successor provision.

§2. This local law shall take effect 120 days after it shall have become a law, except that the commissioner of correction shall, prior to such effective date, take such actions as are necessary to implement the provisions of this law.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s:

I hereby certify that the foregoing is a true copy of a local law of The City of New York,

passed by the Council on ……November 3, 2011…………. and approved by the Mayor

on ……November 22, 2011…………

MICHAEL M. McSWEENEY, City Clerk Clerk of the Council.

CERTIFICATION PURSUANT TO MUNICIPAL HOME RULE §27
Pursuant to the provisions of Municipal Home Rule Law §27, I hereby certify that the enclosed Local Law (Local Law 62 of 2011, Council Int. No. 656-A) contains the correct text and was passed by the New York City Council on November 3, 2011 approved by the Mayor on November 22, 2011 and returned to the City Clerk on November 22, 2011.

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel.