

DRAFT

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF SAN JOSE ADDING A
NEW CHAPTER 10.54 TO TITLE 10 OF THE SAN JOSE
MUNICIPAL CODE REQUIRING ALL LAW
ENFORCEMENT OFFICERS OPERATING IN THE CITY
OF SAN JOSE TO WEAR CLEARLY VISIBLE
IDENTIFICATION AND PROHIBITING THE USE OF FACE
COVERINGS TO OBSCURE IDENTITY DURING PUBLIC
INTERACTION, WITH LIMITED EXCEPTIONS**

WHEREAS, the federal government, through the United States Immigration and Customs Enforcement (ICE), has launched broad immigration enforcement efforts, deploying personnel from various federal agencies, including those within the Department of Justice, as part of the Trump Administration's immigration enforcement operations; and

WHEREAS, ICE officers have conducted operations while wearing face coverings, including gaiters and ski masks; and

WHEREAS, there have been reported incidents of individuals impersonating ICE officers to harass or unlawfully detain others, which violates individuals Constitutional rights and undermines public trust in law enforcement, especially among vulnerable individuals, and poses a threat to public safety; and

WHEREAS, charges have been filed in various cases involving individuals impersonating ICE officers, including:

- (1) the kidnapping and unlawful detention of groups who appear to be of Latino descent;

- (2) impersonating an ICE officer on a university campus;
- (3) impersonating an ICE officer in connection with the sexual assault of a woman while threatening her with deportation; and

WHEREAS, State and local jurisdictions bear primary responsibility for ensuring the safety and well-being of their communities; and

WHEREAS, in exercising their sovereign duty to promote public safety, State and local governments have adopted local laws and policies that reflect a careful judgment of what policies and practices best serve their communities; and

WHEREAS, the United States Supreme Court has long recognized that local control over the health and safety of residents ensures that matters affecting lives, liberties and properties of the local residents are determined by governments that are closer and more accountable to the local residents than distant federal agencies; and

WHEREAS, respect for police powers of state and local governments is enshrined in the United States Constitution and forms a core principle of American federalism; and

WHEREAS, local governments and officials have wide discretion to determine policies that ensure the safety, peace, and good order of their communities; and

WHEREAS, the California Constitution grants cities the authority to enforce all local, police, sanitary, and other ordinances and regulations, provided they do not in conflict with general laws; and

WHEREAS, the California Constitution authorizes charter cities to exercise plenary authority over municipal affairs, free from general law constraints, except where limited by the Constitution; and

WHEREAS, the California Legislature recently adopted Senate Bill 627 prohibiting law enforcement officers, including federal agents operating in California, from wearing face coverings that obscure their identity during the performance of official duties, with limited exceptions; and

WHEREAS, the California Legislature also adopted Senate Bill 805 requiring non-uniformed law enforcement officers to visibly display identifying information—including their agency and either a name or badge number—when performing enforcement duties and also clarifying that existing law enforcement impersonation laws also apply to federal officers; and

WHEREAS, State law prohibits peace officers from detaining victims or witnesses of hate crimes for suspected immigration violations if those individuals are not themselves charged with a state criminal offense; and

WHEREAS, the California Legislature has further limited the circumstances under which local law enforcement may detain individuals at the request of federal immigration authorities; and

WHEREAS, the California Legislature adopted the California Values Act generally prohibiting State and local law enforcement agencies from using public resources to investigate, interrogate, detain, or arrest individuals for immigration enforcement purposes; and

WHEREAS, the California Immigrant Worker Protection Act prohibits employers, or individuals acting on behalf of an employer, from voluntarily consenting to immigration enforcement agents entering nonpublic areas of the workplace, or accessing employee records without a judicial warrant; and

WHEREAS, transparency and accountability in law enforcement are essential for maintaining public trust and supporting effective community policing; and

WHEREAS, ensuring that law enforcement officers are clearly identifiable during public interactions promotes accountability and strengthens police-community relations; and

WHEREAS, the Council of the City of San José finds that prohibiting law enforcement officers from wearing masks or personal disguises while interacting with the public, with limited exceptions, will enhance transparency and accountability; and

WHEREAS, the federal government has constitutional authority over immigration matters; and

WHEREAS, the United States Constitution imposes limits on how the federal governments may exercise that authority; and

WHEREAS, bounty hunters are not authorized federal agents and may not act as such; and

WHEREAS, ICE officers are not permitted to enter nonpublic areas absent (1) exigent circumstances, (2) consent, or (3) a judicial warrant (i.e., not an administrative warrant); and

WHEREAS, this Ordinance is not intended to obstruct, hinder, or interfere with lawful federal immigration enforcement, but instead to enhance transparency, accountability, and public safety within the City's jurisdiction; and

WHEREAS, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), the Director of Planning, Building and Code Enforcement has determined that the provisions of this Ordinance do not constitute a project, under File No. PP PP17-008 (General Procedure & Policy Making resulting in no changes to the physical environment); and

WHEREAS, the City Council of the City of San José is the decision-making body for this Ordinance; and

WHEREAS, this Council has reviewed and considered the "not a project" determination under CEQA prior to taking any approval actions on this Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

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SECTION 1. A new Chapter is added to Title 10 of the San José Municipal Code, to be numbered, entitled and to read as follows:

CHAPTER 10.54
LAW ENFORCEMENT FACE COVERINGS
AND VISIBLE IDENTIFICATION

10.54.010 Definitions

For the purpose of this Chapter, the following definitions shall apply:

- A. "Law enforcement officer" means any officer of a local, state, or federal law enforcement agency, or any person acting on behalf of a local, state, or federal law enforcement agency, who is authorized to enforce laws within the City of San José including but not limited to the United States Immigration and Customs Enforcement ("ICE"), United States Customs and Border Protection ("CBP"), Federal Bureau of Investigation ("FBI"), or any other federal agency with law enforcement authority.
- B. "Face Covering" means any item worn to conceal or obscure an officer's facial features or identity, including but not limited to balaclavas, ski masks, face coverings, scarves, bandanas, or other similar items that cover the nose and mouth in a manner that obscures the wearer's identity.
- C. "Interacting with the public" means any direct communication or engagement between a law enforcement officer and a member of the public while performing official duties, including traffic stops, response to calls for service, or community policing activities.

10.54.020 Federal Authority Recognition and Preemption Avoidance

- A. The City of San José acknowledges and respects the authority of the federal government to enforce federal immigration laws within the United States, including within the City's jurisdiction.
- B. Nothing in this Chapter shall be interpreted to prohibit, restrict, or interfere with the proper exercise of federal immigration enforcement authority in accordance with federal law.
- C. This Chapter is enacted pursuant to the City's legitimate police powers to promote public safety, prevent impersonation and fraud, and ensure transparency and accountability in law enforcement operations within its jurisdiction.
- D. As a charter city, San Jose further enacts this Chapter pursuant to its plenary authority over municipal affairs, as recognized under the California Constitution.

10.54.030 Restrictions on Use of Face Coverings

A law enforcement officer shall not wear any face covering or personal disguise while interacting with the public in the performance of their official duties, except for the following circumstances:

- A. When wearing a medical-grade mask (e.g. surgical masks or N95 respirator) approved by the United States Food and Drug Administration (FDA) or the National Institute for Occupational Safety and Health (NIOSH) to prevent the transmission of airborne diseases; and

- B. When wearing a mask designed to protect against exposure to smoke, ash, or hazardous particulates during a state of emergency related to wildfires, as declared by the City Council or Governor; and
- C. When wearing any other mask, helmet, or device, including, but not limited to, air-purifying respirators, full or half masks, or self-contained breathing apparatus necessary to protect against exposure to any toxin, gas, smoke, inclement weather, or any other hazardous or harmful environmental condition; and
- D. When wearing a motorcycle helmet while utilizing a motorcycle or other vehicle that requires a helmet for safe operations.

10.54.040 Special Weapons and Tactics (SWAT) Team Exception

- A. It is the intent of the San José City Council to ensure that Special Weapons and Tactics (SWAT) team officers, such as San Jose Police Department Mobile Emergency Response Group and Equipment (MERGE), who are specially trained and equipped to respond to high-risk situations that require specialized tactics and equipment beyond the capabilities of regular patrol officers, can use protective equipment, including facial coverings, when required for personal safety in high-risk or tactical operations.
- B. The Chief of Police shall develop and implement operational policies consistent with California Government Code Sections 7288 and 7289 to govern the use of such protective equipment.

10.54.050 Officer Identification Requirements

- A. It is the intent of the City Council to promote transparency and accountability by requiring visible identification of law enforcement officers operating in the City of San Jose.
- B. All law enforcement officers operating within the City of San José shall wear a clearly visible and prominently displayed badge or other form of official identification that includes the officer's name, agency affiliation, and badge or identification number.
- C. Upon request, officers shall provide their full name, agency affiliation, and badge or identification number to any individual subject to an immigration enforcement action.
- D. Officers initiating immigration enforcement activities shall present official credentials identifying themselves as federal law enforcement officers authorized to conduct such operations.
- E. Federal law enforcement agencies shall notify the San Jose Police Department in advance of any operations within the City that are reasonably expected to involve personnel wearing facial coverings or disguises.

10.54.060 Impersonation Prevention, Investigation, and Reporting

- A. The San José Police Department shall:
 - 1. Establish a specialized unit or designate officers trained to investigate incidents involving impersonation of law enforcement officers, including

impersonation of federal agents such as ICE and FBI officers, within the City.

2. Develop and implement protocols for responding to and investigating such reports, including:
 - ii. Procedures for gathering and preserving evidence;
 - iii. Methods for verifying the authenticity of purported federal credentials;
 - iv. Coordination with federal agencies to confirm the identity and authority of individuals claiming to be federal officers; and
 - v. Techniques for interviewing victims and witnesses of impersonation incidents.
- B. Conduct regular training for all police personnel on identifying and responding to potential impersonation incidents.
- C. Establish an expedited response protocol for reports of impersonation in progress.
- D. Maintain detailed records of all reported impersonation incidents, including case details, investigation outcomes, and actions taken or resolution.
- E. Report any confirmed incidents of impersonation to:
 1. The relevant federal law enforcement agency;
 2. The Federal Bureau of Investigation;

3. The United States Attorney's Office;
 4. The California Attorney General's Office; and
 5. The public, through appropriate channels, subject to privacy and confidentiality protections and consistent with ongoing law enforcement operations.
- F. Consistent with privacy laws and ongoing law enforcement operations, the San José Police Department shall report to the City Manager any instance where its officers respond to an incident involving a federal agency conducting immigration enforcement activity in the City. The City Manager shall inform the City Council offices and coordinate with a cross-sector community leadership group.

10.54.070 Enforcement Authority and Mechanisms

- A. The San José Police Department is hereby authorized and directed to enforce the provisions of Section 10.54.060.
- B. Individuals impersonating law enforcement officers shall be subject to:
1. Criminal prosecution under applicable state and local laws, including but not limited to:
 - i. California Penal Code Section 146a (impersonating a peace officer);
 - ii. California Penal Code Section 538d (unauthorized wearing of law enforcement uniform);
 - iii. California Penal Code Section 532 (false pretenses); and

- iv. Any other applicable criminal statutes.
 - 2. Enhanced penalties as provided under California law when impersonation is committed in connection with other criminal offenses.
 - 3. Civil liability for damages caused to victims of impersonation.
 - 4. Public notification of conviction, as allowed under state and federal privacy laws.
- C. The City Manager and City Attorney are authorized to take all necessary and appropriate legal and administrative actions to enforce this Chapter, including but not limited to:
- 1. Seeking injunctive or declaratory relief in a court;
 - 2. Coordinating with federal agencies to address non-compliance;
 - 3. Implementing administrative measures to ensure compliance with verification procedures; and
 - 4. Developing additional enforcement mechanisms as necessary to fulfill the purposes of this Chapter.

SECTION 2. Consistent with Section 1.04.160 of the San José Municipal Code, should any provision of this Ordinance or its application to any person or circumstance be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end,

the provisions hereof are severable. The City Council of the City of San José hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, phrase, and portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions may be declared invalid or unconstitutional.

PASSED FOR PUBLICATION of title this _____ day of _____, 2025, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, MMC
City Clerk