

CITY OF SANTA ROSA
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL
FROM: ADRIANE MERTENS, CHIEF COMMUNICATIONS &
INTERGOVERNMENTAL RELATIONS OFFICER
SUBJECT: COUNCIL DIRECTION TO VOTING DELEGATE FOR LEAGUE
OF CALIFORNIA CITIES 2020 ANNUAL CONFERENCE
REGARDING COUNCIL POSITION ON THE RESOLUTIONS
COMING BEFORE THE LEAGUE GENERAL ASSEMBLY

AGENDA ACTION: MOTION

RECOMMENDATION

It is recommended by the Communications and Intergovernmental Relations Office that the Council, by motion, (a) consider taking a position on a proposed LOCC resolution calling for the amendment of Section 230 of the Communications Decency Act of 1996 to require social media companies to remove materials which promote criminal activity, and (b) provide associated direction to its Voting Delegate for the upcoming meeting of the League General Assembly.

EXECUTIVE SUMMARY

Policy development is a vital and ongoing process within the League of California Cities (LOCC) for determining legislative and program strategies for important issues facing cities throughout California. Policies are submitted for consideration by the General Assembly at the Annual Conference to be voted on by delegates from the cities. Each member city has one Voting Delegate at the General Assembly, which will be held virtually October 7 - 9, 2020. At that meeting, the General Assembly will consider a resolution calling for the amendment of Section 230 of the Communications Decency Act of 1996, so as to require social media companies to remove materials which promote criminal activity. The Communications and Intergovernmental Relations Office recommends that the Council provide direction to the Council's Voting Delegate as to its position on that resolution. The Council may recommend that the Council's Voting Delegate support, oppose or take no position on the resolution.

BACKGROUND

A resolution calling for the amendment of Section 230 of the Communications Decency Act of 1996 – to require social media companies to remove materials which promote

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criminal activity – has been submitted to the General Resolutions Committee for recommendation and voting at the General Assembly. The proposed resolution was also referred to the LOCC's Governance, Transparency and Labor Relations Policy Committee and the Public Safety Police Committee, respectively.

The proposed resolution was submitted in reaction to events whereby persons, using social media platforms to coordinate locations, dates, and times for their planned criminal activity, have committed acts of looting and vandalism resulting in both actual economic harm for targeted businesses, and financial loss to cities who used resources to prevent such acts from occurring when such plans are discovered. The Resolution directs the LOCC to call upon the U.S. Congress to amend Section 230 of the Communications Decency Act of 1996 to condition immunity from civil liability on the following:

1. Online platforms must establish and implement a reasonable program to identify and take down content which solicits criminal activity; and
2. Online platforms must provide to law enforcement information which will assist in the identification and apprehension of persons who use the services of the platform to solicit and to engage in criminal activity; and
3. An online platform that willfully or negligently fails in either of these duties is not immune from enforcement of state and local laws which impose criminal or civil liability for such failure.

Resolutions submitted to the General Assembly must be concurred by five cities or by city officials from at least five or more cities. These letters are included in the packet.

PRIOR CITY COUNCIL REVIEW

N/A

ANALYSIS

The LOCC has provided the following analysis of the proposed resolution:

A RESOLUTION OF THE GENERAL ASSEMBLY OF THE LEAGUE OF CALIFORNIA CITIES CALLING FOR AN AMENDMENT OF SECTION 230 OF THE COMMUNICATIONS DECENCY ACT OF 1996 TO REQUIRE SOCIAL MEDIA COMPANIES TO REMOVE MATERIALS WHICH PROMOTE CRIMINAL ACTIVITIES

Sponsored by the City of Cerritos, the intent of this resolution is to address the use of social media platforms for posting information that leads followers to meet and commit crimes, and to also hold these platforms and the persons who post said information civilly and criminally accountable for all costs incurred by the local jurisdictions where the crimes occurred.

At its core, the existing Section 230 provides immunity from liability for providers and users of an “interactive computer service” who publish information provided by third-party users. This protects websites from lawsuits if a user posts something illegal, although there are exceptions for copyright violations, sex work-related material, and violations of federal criminal law. Protections from Section 230 have come under increased scrutiny recently as Congress examines the influence technology companies hold on political discourse and hate speech. Setting aside Section 230, there are Constitutional issues to consider should there be an attempt to implement such a Resolution into statute.

The First Amendment prohibits government from restricting most forms of speech, which would include proposals to force tech companies to moderate content. While “illegal” types of speech enjoy limited or no First Amendment protection, the line for delineating between “legal” and “illegal” speech is very difficult to determine. Consequently, one would expect online platforms to push back on whether there is a Constitutionally feasible way for them to identify protected speech versus unprotected speech, or whether there is a feasible way to define, “content which solicits criminal activity.”

With respect to the Fourth Amendment, online platforms may argue that requiring them to, “provide law enforcement information that will assist in the identification and apprehension of persons who use the services of the platform to solicit and to engage in criminal activity,” turns them into government actors that search users’ accounts without a warrant based on probable cause, in violation of the Fourth Amendment.

While there is certainly an argument to substantiate concerns around censorship, the use of social media as a tool for organizing criminal activity does raise concern. Here locally, the Santa Rosa Police Department (SRPD) has not observed social media platforms being used to organize events involving looting or vandalism as in the case of the sponsoring agency; however, SRPD does report that social media platforms are regularly used for the organization and promotion of dangerous and illegal sideshow activities that occur in shopping center parking lots at various locations within the city, sometimes drawing a couple hundred vehicles and spectators or more at a time. Response to these events can strain Department resources, but more significantly, endanger the lives of those who participate, spectate, or are simply passing by.

Ultimately, the policy objectives proposed under this Resolution would incentivize social media companies to establish and implement a reasonable program to identify and remove content that solicits criminal activity, though any changes to Section 230 will likely result in legal action to stave off violations of the First and Fourth Amendments.

It is recommended by staff that the Council, by motion, discuss and consider taking a position on the resolution to provide direction to its Voting Delegate for the meeting of the League General Assembly.

FISCAL IMPACT

Approval or direction for either of these resolutions will not have a fiscal impact on the City's General Fund.

ENVIRONMENTAL IMPACT

This action is exempt from the California Environmental Quality Act (CEQA) because it is not a project which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, pursuant to CEQA Guideline section 15378.

BOARD/COMMISSION/COMMITTEE REVIEW AND RECOMMENDATIONS

N/A

NOTIFICATION

N/A

ATTACHMENTS

- Attachment – 2020 Annual Conference Resolution Packet

CONTACT

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