

CITY OF SANTA ROSA
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL
FROM: TERESA STRICKER, INTERIM CITY ATTORNEY
CITY ATTORNEY'S OFFICE
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SUBJECT: RESOLUTION TO SAFEGUARD THE CIVIL RIGHTS, SAFETY
AND DIGNITY OF ALL SANTA ROSA RESIDENTS

AGENDA ACTION: RESOLUTION

RECOMMENDATION

Staff recommends that the Council consider whether to adopt, by resolution, a "Welcoming City" policy entitled "Resolution to safeguard the civil rights, safety and dignity of all Santa Rosa Residents."

EXECUTIVE SUMMARY

The proposed "Welcoming City" resolution recognizes that the City of Santa Rosa has a diverse population, that the recent presidential election has created uncertainty and fear among many communities, and that the City wishes to "foster trust and cooperation" between the City and its police department and immigrant communities.

The resolution (1) calls upon all City residents, departments and employees to speak out against acts of "bullying, discrimination and hate violence," (2) calls upon the federal government to legislate a pathway to citizenship and in the meantime refrain from deportation of those not convicted of felonies, and (3) states that "City employees, including members of the Santa Rosa Police Department, shall not enforce Federal civil immigration laws and shall not use city monies, resources or personnel to investigate, question, detect, or apprehend persons" to federal immigration unless required by state or federal law.

BACKGROUND

On January 31, 2017, the Council voted unanimously to consider at a future meeting a resolution declaring Santa Rosa as a welcoming city, non-cooperative city, or sanctuary city. The mayor has proposed a resolution adopting a policy "to safeguard the civil rights, safety and dignity of all Santa Rosa Residents."

1. SANCTUARY CITIES

In an effort to promote public health and safety, some cities have adopted policies to encourage undocumented individuals to access city services and report crime. The rationale is that the entire community is safer as a result. Such cities sometimes call themselves “sanctuary cities.”

The policies adopted by such cities often include:

- Not requiring proof of legal immigration status to access city services,
- Not questioning crime victims and witnesses about their immigration status, and
- Limiting the city’s cooperation with federal authorities in the enforcement of federal immigration law.

2. RECENT FEDERAL ACTIONS

On January 25, 2017, President Trump issued an executive order on immigration directed at cutting off access to federal funding to “sanctuary jurisdictions.”

First, the order directed that “jurisdictions that willfully refuse to comply with 8 U.S.C 1373 (sanctuary jurisdictions) are not eligible to receive Federal grants, except as deemed necessary for law enforcement purposes by the Attorney General or Secretary [of Homeland Security].” Section 1373 prohibits state and local jurisdictions from banning “any government entity or official” from communicating with federal immigration authorities “regarding the citizenship or immigration status, lawful or unlawful, of any individual.”

Second, the order gave the Secretary of Homeland Security “the authority to designate, in his discretion and to the extent consistent with law, a jurisdiction as a sanctuary jurisdiction.”

Third, the order directed the Office of Management and Budget “to obtain and provide relevant and responsive information on all Federal grant money that currently is received by any sanctuary jurisdiction.”

It is unclear how the Secretary will determine what constitutes a “sanctuary jurisdiction.” The order specifically includes jurisdictions that violate Section 1373, but also may include jurisdictions that do not to comply with voluntary federal immigration detainer requests (also called “holds”).

A detainer request asks a jurisdiction to hold an incarcerated individual for 48 hours beyond the time that individual would otherwise have been released to give federal immigration authorities time to investigate and take custody of the individual for violation of federal immigration laws.

The inclusion of jurisdictions that do not comply with detainer requests would create uncertainty for local agencies in California. Federal law does not require compliance with detainers; in other words, local law enforcement agencies are not legally required to comply. But, under state law, local law enforcement agencies are not free to comply in every situation. The state has legislated rules that limit compliance to situations involving serious or violent crimes. And, as explained below, the state legislature is currently proposing changes to tighten these rules.

3. POSSIBLE NEW STATE DIRECTION ON RELEASING IMMIGRATION INFORMATION: "CALIFORNIA VALUES ACT"

The "California Values Act," Senate Bill 54, proposes new rules for California cities, counties, and school districts to limit the information they can provide to federal immigration authorities.

The current draft of the bill, if enacted, would do the following:

- a. Repeal state law requirement that arresting agencies report immigration information to federal immigration authorities for any individual arrested for violation of any of 14 specified drug offenses. (Repeal of Health & Safety Code 11369)
- b. Generally prohibit "state and local law enforcement agencies and school police and security departments" from participating in enforcement of federal immigration law.
- c. Specifically prohibit detaining an individual based on an immigration hold, prohibit giving federal immigration officials access to interview individuals in agency or department custody and require a judicial warrant to turn an individual over to federal immigration.
- d. Not restrict any government entity or official from communicating information to federal immigration authorities regarding a person's "citizenship or immigration status, lawful or unlawful, pursuant to Sections 1373 and 1644 of Title 8 of the United States Code."
- e. Direct the Attorney General to publish model policies within 3 months, and direct all state and local agencies to review and revise their policies within 6 months.

4. SAN FRANCISCO'S LAWSUIT TO PREVENT POTENTIAL CUT TO FEDERAL FUNDING

On January 31, 2017, the City and County of San Francisco filed a lawsuit challenging President Trump's recent Executive Order.

San Francisco's lawsuit seeks a declaration that San Francisco is in compliance with 8 U.S.C. section 1373, which prohibits restrictions on communicating with federal immigration authorities about a person's immigration status, or in the alternative, that "Section 1373 is unconstitutional on its face and as applied to state and local Sanctuary City laws such as San Francisco's."

In addition, there is pending litigation in the Ninth Circuit Court of Appeals and elsewhere that challenges President Trump's Executive Order imposing a "travel ban" on non-citizens coming from seven countries. These cases involve the President's authority over entry to the country, and do not involve the cut off of federal funds to sanctuary cities.

5. OTHER LIMITS ON THE FEDERAL GOVERNMENT'S ABILITY TO WITHHOLD FEDERAL FUNDING

In addition to the issues raised by the San Francisco lawsuit, there are other legal issues raised by the President's Executive Order.

First, there are serious questions about whether the President has the authority to withhold federal funding through the Executive Order. Second, although Congress may attach conditions on the receipt of federal funds under its "spending" power, the United States Supreme Court has imposed limits on that power. Art. I, § 8, cl. 1; *S. Dakota v. Dole*, 483 U.S. 203, 206-07 (1987). Specifically:

- **Unambiguous:** Any conditions on federal funding must be unambiguous so that a state or local jurisdiction knows what it is getting into.
- **Nexus:** The conditions on funding must be related to the federal interest in the particular national projects or programs that are being funded, and should not apply to all federal funding.
- **Not Coercive:** Congress may not cross the point at which pressure turns into coercion, for example by threatening a large percentage of an agency's budget.

6. SANTA ROSA'S FEDERAL GRANTS

City staff analyzed actual expenditures in Fiscal Year 2015-2016 to determine how much of the City's annual budget relied on federal funding. Overall, federal funding comprised 5.46% of the City's operating expenditures and 1.6% of the City's Capital Improvement Program expenditures, for a total of \$25,618,540.

The Housing Authority division of Housing and Community Services and the Transit division of Transportation and Public Works implement functions that are the most reliant on federal funds. Federal funding comprised 87% of the Housing Authority's expenditures during FY 15-16. Funded programs include the Section 8 Housing Voucher program, neighborhood revitalization, and services for homeless people and others serving approximately 5,000 people annually.

Federal funding comprised 14.4% of Transit's expenditures. While only 1.6% of Capital Improvement Program expenditures in FY 15-16 were federal funds, the City anticipates receiving \$6.5 million in federal funds for roadway improvements from the second round of the One Bay Area Grant (OBAG) program.

The Police Department and Fire Department receive lower amounts of federal funding. In FY 15-16, federal funds were 2.19% of Fire's operating budget and 0.79% of Police's operating budget. In FY 16-17, Fire is not relying on federal funds, but they are pursuing a federal grant for \$1,542,180.

7. SANTA ROSA POLICE DEPARTMENT POLICY

Santa Rosa's Police Department has a policy on "Immigration Violations" that states "immigration status of individuals alone is not a matter for police action," that the Department does not conduct immigration "sweeps," and that "all individuals, regardless of their immigration status, must feel secure that contacting law enforcement during times of crisis or to report suspicious or criminal activities will not make them vulnerable to deportation."

PRIOR CITY COUNCIL REVIEW

Not Applicable.

ANALYSIS

The proposed resolution is a general statement of principles. The resolution states that the City should be safe for all communities, regardless of immigration status, should encourage trust with law enforcement, and should not use its resources to enforce federal immigration laws.

Federal law does not require the City to enforce federal immigration laws. But the President, through his Executive Order, has directed the Attorney General and Secretary of Homeland Security to identify "sanctuary jurisdictions" and deprive them of federal grant funds. At this point, it is unclear how broadly the federal government will identify "sanctuary jurisdictions" and which funds will be targeted.

At the same time, the state legislature is considering specific rules to limit law enforcement cooperation with federal immigration authorities. These rules would affect

the policies of individual law enforcement agencies, including local Sheriff and Police Departments. Under the present proposal, the state Attorney General would draft model policies. The City of San Francisco has filed a lawsuit to invalidate the Executive Order and other entities also may file suit if their federal funding is threatened.

FISCAL IMPACT

The potential fiscal impact of the President's Executive Order is uncertain until the federal government determines the identity of "sanctuary jurisdictions," the federal government determines what federal grant funds will be affected, and the courts decide the legality of the Executive Order in the San Francisco case, or other cases that may be brought.

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

Not Applicable.

NOTIFICATION

Not Applicable.

ATTACHMENTS

- Attachment 1 - Police Department Policy 428
- Attachment 2 – Original Proposed Resolution
- Resolution

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