

**REPORT TO THE
CITY COUNCIL**
City of Salinas, California

DATE: February 21, 2017

FROM: Christopher A. Callihan, City Attorney

SUBJECT: A RESOLUTION OF THE CITY OF SALINAS REGARDING IMMIGRANT
PERSONS AND IMMIGRATION STATUS

RECOMMENDATION:

It is recommended that the City Council consider a Resolution affirming the City of Salinas's position that all persons be treated equally and with dignity and respect regardless of their national origin or immigration status.

DISCUSSION:

At the January 10, 2017 City Council meeting, Council member Davis requested, with the support of Council member Barrera, the preparation for the full City Council's consideration of a Resolution regarding the City's position on the enforcement of federal immigration regulations. At the City Council's February 7, 2017 meeting, the City Council unanimously approved a Resolution supporting comprehensive immigration reform and directed the Mayor to submit a letter to the City's Congressional delegation calling upon Congress to consider and to approve comprehensive immigration reform. During the City Council's consideration of that Resolution, Councilmember Davis suggested that an additional Resolution be prepared and brought forward to the City Council making clear the City's position regarding immigrant persons and their immigration status. Councilmember McShane supported this request. Councilmember Davis requested specific information be included in the Resolution to make clear to the community the City's position regarding the City's use of resources to support immigration enforcement.

The proposed Resolution has five (5) components, in addition to the findings made in support of the Resolution:

1. City of Salinas officials and employees, including its law enforcement officers, shall not take any direct action against an individual solely because of his/her immigration status.
2. The City of Salinas shall not use its resources, including personnel resources, technology, facilities, equipment, or funds to enforce or to assist in the enforcement of federal immigration regulations, which is the exclusive authority of the federal government.

3. In accordance with state and federal laws the City of Salinas, including the Salinas Police Department, will continue to cooperate with federal immigration agencies in matters involving criminal activity and the protection of public safety.

4. Nothing in this Resolution shall be construed to prohibit City employees, including Salinas Police Officers, from cooperating with federal immigration agencies when they are required to do so by statute, federal regulation, court decision, or a legally binding agreement.

5. Nothing in this Resolution shall be construed or implemented to conflict with any obligation imposed by federal law. City staff shall monitor any efforts by the federal government to withhold or to withdraw federal funding as a result of the City's policies and practices with regard to its immigrant community and shall take all actions necessary to protect such funding.

While many state and local jurisdictions throughout the United States have adopted policies or practices that limit their jurisdictions' federal civil immigration law enforcement efforts, the federal government has not yet taken a formal position as to whether those state and local policies or practices violate federal law. The local policies or practices are sometimes referred to as "sanctuary policies", while the jurisdictions themselves are sometimes referred to as "sanctuary cities."

This Resolution essentially establishes a "sanctuary policy" for the City of Salinas and makes clear that to the extent federal funding for the City would not be compromised, it is the policy of the City of Salinas to not use City resources to assist in the enforcement of federal immigration regulations. Operating pursuant to the Resolution, the City of Salinas will continue to cooperate with federal immigration agencies in matters involving criminal activity and the protection of public safety, but will not take any direct action against an individual because of his/her immigration status.

On January 25, 2017, President Trump signed an Executive Order titled "Enhancing Public Safety in the Interior of the United States" taking the position that jurisdictions which declare themselves to be "sanctuary" jurisdictions and which do not comply with and enforce federal immigration law will not receive federal funding. (A copy of the Executive Order is attached to this Report for reference. Refer to Section 9 for the provision regarding withholding of federal funding.) The order indicates that sanctuary cities "that fail to comply with applicable Federal law do not receive Federal funds, except as mandated by law." More specifically, it mandates that "the Attorney General and the [Homeland Security] Secretary, in their discretion and to the extent consistent with law, shall ensure 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 the Secretary. Section 1373 mandates that "a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual."

Any attempts by the federal government to withhold federal funding to "sanctuary" jurisdictions is, in my opinion, unconstitutional. In 2012, the United States Supreme Court issued its opinion in National Association of Independent Businesses v. Sebellius (2012) 132 S. Ct. 2566. There are two

serious constitutional problems with conditioning federal grants to sanctuary cities on compliance with Section 1373. First, longstanding United States Supreme Court decisions mandate that the federal government may not impose conditions on grants to states and localities unless the conditions are “unambiguously” stated in the text of the law “so that the States can knowingly decide whether or not to accept those funds.” Few if any federal grants to sanctuary cities are explicitly conditioned on compliance with Section 1373. Any such condition must be passed by Congress, and may only apply to new grants, not ones that have already been appropriated. The executive cannot simply make up new conditions on its own and impose them on state and local governments.

The Supreme Court has repeatedly ruled that the federal government may not “commander” state and local officials by compelling them to enforce federal law. Such policies violate the Tenth Amendment. Section 1373 attempts to circumvent this prohibition by forbidding higher-level state and local officials from mandating that lower-level ones refuse to help in enforcing federal policy. But the same principle that forbids direct commandeering also counts against Section 1373. As the late conservative Justice Antonin Scalia explained in Printz v. United States (1997) 521 U.S. 898, the purpose of the anti-commandeering doctrine is the “[p]reservation of the States as independent and autonomous political entities.” That independence and autonomy is massively undermined if the federal government can take away the states’ power to decide what state and local officials may do while on the job. As Scalia put it in the same opinion, federal law violates the Tenth Amendment if it “requires [state employees] to provide information that belongs to the State and is available to them only in their official capacity.” The same is true if, as in the case of Section 1373, the federal government tries to prevent states from controlling their employees’ use of information that “is available to them only in their official capacity.”

The anti-coercion doctrine further holds that while Congress may impose conditions on receipt of federal funds, it cannot coerce states into accepting those conditions. In the 1980s, Congress passed a law withholding 5% of highway funds from any state that refused to adopt a minimum drinking age of 21. The Supreme Court, in South Dakota v. Dole (1987) 479 U.S. 1027, upheld it. Because highway funds are expended — in part — to ensure safe travel, the court reasoned that raising the drinking age was “relevant to the federal interest in the project and the overall objectives thereof.” More significantly, withholding 5% of federal funds wasn’t coercive because while it represented a loss of \$615 million dollars, it was only 0.19% of states’ total budgets.

By contrast, in National Federation of Independent Businesses v. Sebelius (2012) 567 U.S. ____, the Supreme Court found that Congress violated the anti-coercion doctrine. Specifically, in the Affordable Care Act, Congress withheld 100% of states’ Medicaid funding if they didn’t expand those programs. A court plurality characterized this as a coercive “gun to the head” because it involved a loss of over \$233 billion dollars — more than 20% of states’ budgets.

Nonetheless, to mitigate any potential action by the federal government to reduce or to eliminate federal funding to Salinas should it be considered a sanctuary city, paragraph number 5 of the proposed Resolution makes it clear that there is no intent for the Resolution to be in conflict with federal law or any obligation imposed pursuant to federal law. Further, paragraph number 5 vests in City staff the obligation to monitor efforts by the federal government to withhold or to withdraw

federal funding as a result of the proposed action and to take all actions necessary to protect such funding.

ISSUE:

Shall the City Council approve a Resolution making clear the City will not take any direct action against an individual solely based on his/her immigration status and will not use its resources to assist in the enforcement of federal immigration regulations?

FISCAL IMPACT:

No impact to the City's General Fund or Measure V or Measure G funds are anticipated with the recommended action.

TIME CONSIDERATIONS:

There are no special time considerations associated with the recommended action.

ALTERNATIVES:

The City Council may choose to not to take action at this time.

CONCLUSION:

Many cities and towns across the United States have taken action to demonstrate their commitment to equal, respectful, and dignified treatment of all people, regardless of their immigration status. If the Salinas City Council approves the proposed Resolution it would similarly demonstrate its commitment to its residents by unequivocally stating its support of all residents by assuring them that no City resources would be used to administer federal immigration law, except in those situations involving criminal activity and the protection of public safety. In approving the proposed Resolution, the City Council would join public officials in more than ten major United States cities including San Francisco, Oakland, Los Angeles, Santa Ana, New York, Chicago, Washington D.C.

Attachments:
Proposed Resolution

RESOLUTION NO. _____ (N.C.S.)

A RESOLUTION OF THE CITY OF SALINAS AFFIRMING ITS POSITION THAT ALL PERSONS BE TREATED EQUALLY AND WITH DIGNITY AND RESPECT REGARDLESS OF THEIR NATIONAL ORIGIN OR IMMIGRATION STATUS

WHEREAS, it has been and continues to be the policy of the City of Salinas to employ and to treat all persons equally and with dignity and respect, regardless of their race, religion, creed, color, national origin, ancestry, age, sex, sexual orientation, handicapped status, or other status; and

WHEREAS, the City of Salinas has a long-standing and rich culture of diversity, migration, and immigration; and

WHEREAS, the City of Salinas has long embraced and welcomed individuals and families of diverse racial, ethnic, religious, and national backgrounds, including a large immigrant population; and

WHEREAS, the City of Salinas welcomes, honors, and respects the contributions of all of its residents, regardless of their immigration status; and

WHEREAS, Salinas's immigrant families contribute to the economic and social fabric of the City by establishing and patronizing businesses, contributing to the arts and culture, and achieving other accomplishments which benefit not only themselves and their families, but the entire community; and

WHEREAS, in 2012 the United States Conference of Mayors approved a resolution related to comprehensive immigration reform and in doing so noted the following:

1. Immigrants are the overwhelming majority of workers in the agriculture sector, harvesting food that Americans eat;
2. Studies have shown that immigrants are nearly 30 percent more likely to start a business than non-immigrants;
3. The Small Business Administration has estimated that immigrant business owners generate \$67 billion in U.S. business income.

WHEREAS, agriculture remains Monterey County's largest sector in terms of economic output and the single biggest employer; Monterey County Agriculture contributes a total of \$8.1 billion to the local economy ("Economic Contributions of Monterey County Agriculture", Monterey County Agricultural Commissioner, Published June 2015; <http://montereycfb.com/uploads/Monterey%20County%20Economic%20Contributions%20of%20Ag%202015.pdf>)

WHEREAS, it has been reported that "California's \$43.5 billion-a-year farm industry depends on a shadow workforce of undocumented Mexican immigrants" and that "[i]n Salinas...thousands of undocumented immigrants work 10-hour days, six days a week, for little pay picking fruits and vegetables by hand because machines would damage the delicate crops" ("California's \$43 Billion

Farms See Labor in Immigrant Fix”; <https://www.bloomberg.com/news/articles/2013-08-14/california-s-43-billion-farms-see-labor-in-immigrant-fix>; 2017 Bloomberg LP); and

WHEREAS, the Salinas City Council is greatly concerned about public safety in Salinas and the mission of the Salinas Police Department is to protect the safety of the public against crimes committed by persons who are native born or immigrants; and

WHEREAS, the City of Salinas wishes to foster an environment of trust and cooperation with its immigrant communities and wishes to encourage immigrants to report crime and communicate with the Salinas Police without fear of being arrested or reported to federal law enforcement agencies; and

WHEREAS, the Salinas City Council desires to ensure that its immigrant residents participate in civic life and daily activities without fear of being arrested or reported to federal law enforcement agencies; and

WHEREAS, the City of Salinas has twice previously taken a position on immigration reform and in doing so has recognized the contributions of immigrant communities in the City (Resolution No. 18962, April 11, 2006 and Resolution No. 20360, April 9, 2013); and

WHEREAS, many cities and towns throughout the United States have adopted resolutions, ordinances, policies, and practices to demonstrate their commitment to equal, respectful, and dignified treatment of all people, regardless of their immigration status; and

WHEREAS, the City of Salinas desires to similarly demonstrate its commitment to its residents and to all people regardless of their immigration status.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF SALINAS AS FOLLOWS:

6. City of Salinas officials and employees, including its law enforcement officers, shall not take any direct action against an individual solely because of his/her immigration status.

7. The City of Salinas shall not use its resources, including personnel resources, technology, facilities, equipment, or funds to enforce or to assist in the enforcement of federal immigration regulations, which is the exclusive authority of the federal government.

8. In accordance with state and federal laws the City of Salinas, including the Salinas Police Department, will continue to cooperate with federal immigration agencies in matters involving criminal activity and the protection of public safety.

9. Nothing in this Resolution shall be construed to prohibit City employees, including Salinas Police Officers, from cooperating with federal immigration agencies when they are required to do so by statute, federal regulation, court decision, or a legally binding agreement.

10. Nothing in this Resolution shall be construed or implemented to conflict with any obligation imposed by federal law. City staff shall monitor any efforts by the federal government to withhold or

to withdraw federal funding as a result of the City's policies and practices with regard to its immigrant community and shall take all actions necessary to protect such funding.

PASSED AND APPROVED this 7th day of February 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Joe Gunter, Mayor

ATTEST:

Patricia M. Barajas, City Clerk

