



CITY OF SALINAS COUNCIL STAFF REPORT

DATE: June 20, 2017

DEPARTMENT: CITY ATTORNEY'S OFFICE

FROM: Christopher A. Callihan, City Attorney
Michael Mutalipassi, Sr. Deputy City Attorney

TITLE: WELCOMING CITY RESOLUTION

RECOMMENDED MOTION:

A motion to consider a Resolution declaring Salinas as a Welcoming City.

RECOMMENDATION:

It is recommended that the City Council consider a Resolution declaring Salinas a Welcoming City.

EXECUTIVE SUMMARY:

The Welcoming City Resolution attached to this Report reinforces the City's position that enforcement of federal immigration law is the sole responsibility of the federal government. In recognition of that position, the Resolution formalizes existing City policy that no City resources are to be used in the enforcement of federal immigration regulations and that the City will not take any direct action against an individual because of his or her citizenship or immigration status except in connection with a lawful eligibility criteria for public assistance.

The City Council's Subcommittee considered the attached Resolution and recommends it for approval by the full City Council.

BACKGROUND:

The City Council's February 21, 2017 Resolution Regarding Immigrant Persons and Immigration Status.

On February 21, 2017, the City Council considered a Resolution which would have affirmed the City's position that all persons be treated equally and with dignity and respect regardless of their national origin or immigration status. That Resolution would have established a "sanctuary policy" for the City of Salinas and would have made clear that to the extent federal funding for the City would not be compromised, it would be the policy of the City not to use City resources to assist in the enforcement of federal immigration regulations. The City Council rejected that

Resolution by a 4-3 vote primarily due to the Councilmembers' concerns that if the City approved the Resolution it risked the loss of federal funding through the implementation of Executive Order No. 13678 ("Enhancing Public Safety in the Interior of the United States"). Specifically, the City Councilmembers who opposed approval of the Resolution cited the Executive Order's mandate that the Attorney General and the Secretary of Homeland Security shall ensure that jurisdictions that fail to comply with 18 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 and the Secretary of Homeland Security.

Legal Considerations.

On January 25, 2017, President Trump signed an Executive Order (Executive Order No. 13678) 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. 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 [Department of 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. When the City Council considered the first proposed Resolution on February 21, 2017, the City Attorney's Office made clear that based on legal precedent, "any attempts by the federal government to withhold federal funding to 'sanctuary' jurisdictions [would be] unconstitutional."

In two related actions, the County of Santa Clara and the City and County of San Francisco challenged Section 9 of the Executive Order as facially unconstitutional and brought motions for preliminary injunction seeking to enjoin its enforcement. Thirty-six other cities and counties from across California, including the City of Salinas, joined in the lawsuits as amici. On April 25, 2017, Judge Orrick from the District Court for the Northern District of California (San Francisco) granted the motion for preliminary injunction on a nationwide basis finding Section 9 of the Executive Order, relating to the withholding of funds, to be unconstitutional. The federal government is seeking review of the District Court's decision.

Following Judge Orrick's decision, Attorney General Jeff Sessions issued a memorandum attempting to clarify the Federal government's position and to save the Executive Order from the nationwide injunction. In his memorandum, the Attorney General states that "section 9(a) of the Executive Order, which is directed to the Attorney General and the Secretary of Homeland Security, will be applied solely to federal grants administered by the Department of Justice or the Department of Homeland Security, and not to other sources of federal funding." The Attorney General's memorandum continues and makes clear his interpretation of the Executive Order is to ensure that jurisdictions comply with Section 1373, otherwise they would not be eligible for DOJ

or DHS grants. Section 1373, to which Section 9 of the Executive Order refers, prohibits local governments from restricting government officials or entities from communicating immigration status information to Immigration and Customs Enforcement (ICE). The DOJ would thus require jurisdictions applying for certain grants to certify their compliance with federal law, including Section 1373, as a condition for receiving a grant award. The attached Resolution is written such that it affirms the City's compliance with Section 1373 based on official guidance issued by the Office of Justice Programs and the United States Inspector General. This is significant because the City receives several grants from the DOJ (including grants for the Salinas Police Department) which would otherwise be in jeopardy.

The resolution is drafted in accordance with current law as it applies to grants that have already been awarded and are presently being administered by the DOJ. The interaction between federal, state, and local agencies with regard to immigration is a rapidly evolving area of law. The federal government remains empowered to change the requirements of grants that it will award in the future within the boundaries established by the U.S. Constitution.

California Senate Bill 54: "California Values Act"

Senate Bill 54, titled the "California Values Act", passed the Senate and is now to be considered by the California Assembly. In summary, this bill bars state and local law enforcement agencies from using their resources, including money, facility, property, equipment or personnel, to help with immigration enforcement. State and local law enforcement agencies would be prohibited from using resources to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes, as specified. Senate Bill 54 bars law enforcement from detaining a person due to a hold request, responding to federal immigration enforcement's requests for notification, or providing information about a person's release date unless that is already available publicly. The bill contains some exceptions, allowing local agencies to transfer individuals to federal immigration authorities if there is a judicial warrant or if the person has been previously convicted of a violent felony. It also requires notification to U.S. Immigration and Customs Enforcement of scheduled releases of people who have been convicted of violent felonies.

If approved by the Assembly, this Bill would become State law and would be the minimum requirements with which all local jurisdictions subject to the Bill must comply. To the extent the attached Resolution does not meet the standards set by this Bill, the Resolution would be preempted.

The Welcoming City Resolution.

Following the City Council's February 21, 2017 action, Councilmember Villegas, with the support of Councilmembers De La Rosa and Barrera, sought to have the City Council consider a second Resolution regarding the City's status as a "sanctuary jurisdiction". Councilmember Villegas proposed a draft Resolution, which, as attached, incorporates review from the City Attorney's Office and from the City Council's Subcommittee. The attached Resolution has several components, in additions to the findings made in support of the Resolution:

1. No City department, agency, officer, or employee will use any City funds, resources, or personnel to investigate, request, or collect immigration or citizenship information of any individual except as related to a crime or as necessary as a lawful eligibility criteria for public assistance.
2. No City department, agency, officer, or employee shall condition the provision of City services or benefit on the citizenship or immigration status of an individual except where such conditions are lawfully imposed by federal or state law or local public assistance eligibility criteria.
3. No City department, agency, officer, or employee shall release any information otherwise subject to confidentiality policies necessary for the performance of municipal functions.
4. No City department, agency, officer, or employee shall allow the use of any City facility by DHS for the enforcement of federal civil immigration law, including, but not limited to, the use of office space and interview rooms.
5. No City department, agency, officer, or employee shall enter into any agreement to perform any immigration officer functions under section 287(g) of the INA (8 U.S.C. § 1357(g)).
6. No City department, agency, officer, or employee shall restrict any government entity, official, or employee from sending to DHS, receiving from DHS, or maintaining information regarding the citizenship or immigration status, lawful or unlawful, of any individual, and nothing set forth in this resolution restricts such maintenance or communication.
7. No City department, agency, officer, or employee shall restrict sending to or receiving from DHS citizenship or immigration status information; maintaining information regarding citizenship or immigration status; or exchanging citizenship or immigration status information with any other Federal, State, or local government entity, and nothing set forth in this resolution restricts such actions.

The attached Resolution also contains the following:

1. Nothing in this Resolution shall be construed to prohibit any City officer or employee from participating in task force activities with federal criminal law enforcement authorities.
2. Nothing in this Resolution shall be construed to prohibit the federal immigration authorities from enforcing federal immigration law in the city of Salinas.
3. Nothing in this Resolution allows City employees to limit or to obstruct federal authorities from enforcing federal immigration law.
4. Nothing in this Resolution shall be construed to prohibit any City law enforcement officer from investigating violations of criminal law.

5. The City Attorney shall work with City departments and agencies to implement this Resolution.

And, in an attempt to ensure the City's policy with respect to immigration status is current with applicable law, the attached Resolution provides that the City will from time-to-time review this Resolution to ensure the City's policy remains consistent with federal law, regulations, and policies.

City Council Subcommittee.

The attached Resolution reflects the consensus developed among the three City Councilmembers who comprised the Subcommittee (Barrera, McShane, and Villegas). The Subcommittee worked hard on developing consensus and considered the wording of each paragraph of the attached Resolution, including the title. The intent in doing so and in developing the attached Resolution was to establish a policy the Subcommittee determined would be most-acceptable to the full City Council and the Salinas community.

With respect to the title of the attached Resolution, the Subcommittee was mindful of the desires of some members of the community for the Resolution to be titled "Sanctuary City Resolution". The Subcommittee considered that as an alternative title and determined that the symbolism reflected in the title "Sanctuary City" should not overshadow the content and the intent of the attached Resolution.

Remember when this came to Council the first time and the reasoning behind why certain votes went the way they did.

CEQA CONSIDERATION:

The City Council's consideration and approval of the attached Resolution is exempt from environmental review under the California Environmental Quality Act (CEQA) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. [CEQA Guidelines Section 15061(b)(3)]

STRATEGIC PLAN INITIATIVE:

The City Council's approval of the attached Resolution is not among the City Council's current goals and objectives as identified in the City Council's current Strategic Plan.

FISCAL AND SUSTAINABILITY IMPACT:

No impact to the City's General Fund is anticipated upon the City Council's approval of the attached Resolution.

ATTACHMENTS:

Resolution

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

**A RESOLUTION OF THE CITY OF SALINAS DECLARING SALINAS A
WELCOMING CITY**

WHEREAS, the City of Salinas is home to a diverse and vibrant community of people representing many races, ethnicities, and nationalities, including immigrants from all over the world; and

WHEREAS, according to the 2015 American Community Survey Census Bureau, approximately thirty-eight percent of all City residents are foreign-born; and

WHEREAS, the City Council recognizes that fostering a relationship of trust, respect, and open communication between City employees and City residents is essential to City departments' core mission of ensuring public safety and serving the needs of the entire community; and

WHEREAS, the City Council wishes to encourage crime reporting and cooperation in the investigation of criminal activity, by all individuals, regardless of their immigration status. All individuals must feel secure that contacting or being addressed by members of law enforcement will not automatically lead to immigration inquiry or deportation. While it may be necessary to determine the identity of a victim or witness, members shall treat all individuals equally and without regard to race, color or origin in any way that would violate the United States or California Constitutions; and

WHEREAS, the City Council finds that federal demands that local law enforcement voluntarily cooperate with ICE will erode the relationship of trust between immigrant communities and City agencies, discourage crime victims and witnesses from coming forward and cooperating with local law enforcement officials, and create fear of seeking necessary services and medical assistance needed by residents and their families, thereby undermining the health, safety, and well-being of all residents of the City regardless of their immigration status; and

WHEREAS, the enforcement of federal civil immigration law is the sole responsibility of the federal government; and

WHEREAS, consistent with the United States Constitution's prohibition on the federal commandeering of local resources, the City Council opposes any agreement to deputize local officials or divert City resources to the enforcement of civil immigration law; and

WHEREAS, the enforcement of civil immigration law is entirely within the providence of the federal government, and the City of Salinas cannot bar any or all federal agents, including agents from the Department of Immigration and Customs Enforcement ("ICE"), from conducting independent immigration enforcement actions within the City of Salinas; and

WHEREAS, the City of Salinas remains committed to maximizing public safety, public health, and vital services on which the entire community depends, and recognizes that the best way to achieve these priorities is to foster an environment of inclusiveness and trust between the City

government and all City residents, and this necessitates the disentanglement of local law enforcement from ICE and immigration enforcement operations.

NOW, THEREFORE, BE IT RESOLVED by the Council of Salinas that as to all City departments:

1. No City department, agency, officer, or employee will use any City funds, resources, or personnel to investigate, request, or collect immigration or citizenship information of any individual except as related to a crime or as necessary as a lawful eligibility criteria for public assistance.
2. No City department, agency, officer, or employee shall condition the provision of City services or benefits on the citizenship or immigration status of an individual except where such conditions are lawfully imposed by federal or state law or local public assistance eligibility criteria.
3. No City department, agency, officer, or employee shall release any information otherwise subject to confidentiality policies necessary for the performance of municipal functions.
4. No City department, agency, officer, or employee shall allow the use of any City facility by DHS for the enforcement of federal civil immigration law, including, but not limited to, the use of office space and interview rooms.
5. No City department, agency, officer, or employee shall enter into any agreement to perform any immigration officer functions under section 287(g) of the INA (8 U.S.C. § 1357(g)).
6. No City department, agency, officer, or employee shall restrict any government entity, official, or employee from sending to DHS, receiving from DHS, or maintaining information regarding the citizenship or immigration status, lawful or unlawful, of any individual, and nothing set forth in this resolution restricts such maintenance or communication.
7. No City department, agency, officer, or employee shall restrict sending to or receiving from DHS citizenship or immigration status information; maintaining information regarding citizenship or immigration status; or exchanging citizenship or immigration status information with any other Federal, State, or local government entity, and nothing set forth in this resolution restricts such actions.

BE IT FURTHER RESOLVED that:

8. Nothing in this Resolution shall be construed to prohibit any City officer or employee from participating in task force activities with federal criminal law enforcement authorities.
9. Nothing in this Resolution shall be construed to prohibit the federal immigration authorities from enforcing federal immigration law in the city of Salinas.

10. Nothing in this Resolution allows City employees to limit or to obstruct federal authorities from enforcing federal immigration law.
11. Nothing in this Resolution shall be construed to prohibit any City law enforcement officer from investigating violations of criminal law.
12. The City Attorney shall work with City departments and agencies to implement this Resolution.
13. The City will from time-to-time review this Resolution to ensure this policy remains consistent with federal law, regulations, and policies.

PASSED AND APPROVED this 20th day of June, 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED

Joe Gunter, Mayor

ATTEST

Patricia M. Barajas, City Clerk