



# City of Culver City

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## Staff Report

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**File #:** 16-784, **Version:** 1

**Item #:** A-1.

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**CC - Consideration of Adoption of a Resolution Declaring the City of Culver City to be a Sanctuary City or Other Direction to City Manager as Deemed Appropriate.**

**Meeting Date:** March 27, 2017

**Contact Person/Dept:** Carol Schwab/City Attorney; Lisa Vidra/Sr. Deputy City Attorney

**Phone Number:** (310) 253-5660

**Fiscal Impact:** Yes ☐ No ☒

**General Fund:** Yes ☐ No ☒

**Public Hearing:** ☐ **Action Item:** ☒ **Attachments:** ☐

**Commission Action Required:** Yes ☐ No ☒ **Date:**

**Public Notification:** (E-Mail) Meetings and Agendas - City Council (03/22/17);

**Department Approval:** Carol Schwab, City Attorney (03/22/17)

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### **RECOMMENDATION**

Staff recommends the City Council consider adopting a resolution declaring the City of Culver City to be a sanctuary city, or other direction to the City Manager as deemed appropriate.

### **BACKGROUND**

At the February 13, 2017 City Council Meeting, after receiving public comment on the issue, the City Council directed staff to agendize consideration of a resolution declaring Culver City to be a sanctuary city.

#### **Introduction**

There is no single definition of what it means to be a sanctuary city. The term originated in the 1980s when churches, community organizations and private individuals established networks to provide assistance and shelter to Central American immigrants who were fleeing difficulties in their home countries and were not able to obtain asylum in the United States. In response to that sanctuary movement and related immigration concerns, local jurisdictions in the United States began to adopt policies, resolutions and ordinances to limit local law enforcement's role in federal immigration

enforcement.

These policies were considered to be consistent with the concept of community policing, where law enforcement and their local communities establish a relationship of mutual trust and cooperation. Many public officials and law enforcement agencies around the country believe that the trust of undocumented immigrants in law enforcement is undermined when individuals fear interaction with the local police due to concerns over deportation. They state that such mistrust could result in diminished cooperation by undocumented immigrants to come forward in regard to witnessing crimes or providing helpful information to law enforcement.

Although the nature and requirements of these local sanctuary policies may differ, the policies generally do not prevent federal authorities from still performing their own duties including entering local jurisdictions and detaining, arresting, or deporting immigrants, using federal resources and federal officers.

#### The January 2017 Executive Order and Federal Law

The issue of sanctuary cities recently came to the forefront of public discussion during the 2016 presidential campaign, and even more so after the election of President Donald Trump. On January 25, 2017, President Trump issued an Executive Order entitled “Enhancing Public Safety in the Interior of the United States” (Executive Order 13,768; 82 Fed. Reg. 8799 (“Executive Order”). Among other things, the Executive Order announced that it is the policy of the Executive branch to withhold federal funds from “sanctuary jurisdictions” that willfully refuse to comply with 8 U.S.C. 1373 (“Section 1373”), or that hinder or prevent the enforcement of federal law, with direction to the Attorney General and the Secretary of Homeland Security to ensure that sanctuary jurisdictions do not receive federal grants. The Executive Order further states that the Secretary of Homeland Security has the authority to designate whether a jurisdiction is a sanctuary jurisdiction. The Executive Order also directs the Attorney General to take enforcement action against any local entity that hinders the enforcement of Federal Law.

The Federal Law on this subject is found in Section 1373, which was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. Section 1373 states as follows:

(a) In General. Notwithstanding any other provision of Federal, State or local law, a Federal, State or local governmental 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.

(b) Additional authority of governmental entities. Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

(1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.

(2) Maintaining such information.

- (3) Exchanging such information with any other Federal, State, or local government entity.

The issue of whether the Executive Order can be enforced has been the subject of legal analysis as well as two challenges in California. The City and County of San Francisco filed a lawsuit challenging the Executive Order, alleging that it is unconstitutional under the Tenth Amendment to withhold federal funds from sanctuary jurisdictions. The County of Santa Clara also filed suit challenging the constitutionality of the Executive Order, and requested an injunction prohibiting the federal government from taking away the County's federal funds.

Opponents of the Executive Order argue that the Tenth Amendment prohibits the federal government from "commandeering" state and local governments by forcing them to enforce federal law. Further, nearly 300 legal scholars from around the country recently sent a letter to President Trump to share their legal conclusion that the portion of the Executive Order that directs the federal government to withhold federal funding from sanctuary jurisdictions is unconstitutional under the Tenth Amendment, and exceeds both the federal government's powers under the Spending Clause of the Constitution and the President's powers.

#### Other Cities

Numerous cities around the country have declared themselves to be sanctuary cities. Some reaffirmed existing sanctuary policies and some adopted sanctuary policies since the 2016 election. Sanctuary cities include New York, Washington D.C., Chicago, New Orleans, Minneapolis and Houston. In California, numerous cities have adopted sanctuary city resolutions, or have adopted statements or policies with the same effect, including West Hollywood, Los Angeles, Berkeley, Davis, Alameda, Oakland, Santa Ana, Santa Rosa, La Puente, and others. Most recently, on March 13, 2017, the City Council of the City of Malibu adopted a resolution declaring Malibu as a sanctuary city.

#### School Districts

A number of California school districts have also adopted resolutions, stating their school is a "safe zone" or "safe haven", including the Culver City Unified School District ("CCUSD"). At its November 22, 2016 meeting, the CCUSD Board of Education passed a resolution declaring all CCUSD campuses as safe zones. The resolution states that district personnel should not inquire about a student's immigration status, or that of its family members, and that any request for information about a student's immigration status should be referred to the Superintendent for review and decision, to ensure compliance with the 1982 U.S. Supreme Court decision that no public school may deny children access to education based on their immigration status.

#### State Law Developments

Shortly after the election, SB 54, the California Values Act, was introduced in the California Senate. If passed, it would prohibit state and local law enforcement agencies from using resources to investigate, interrogate, detain, detect or arrest persons for immigration enforcement purposes. The bill would also repeal current law that makes it mandatory for law enforcement to inform federal authorities when noncitizens are convicted of certain Health and Safety Code violations.

SB 54 would also require the Attorney General to publish model policies limiting assistance to federal

enforcement agencies with immigration enforcement to the extent possible under state and federal law. SB 54 specifically states that it does not prohibit or restrict a governmental agency or official from sending to or receiving from federal immigration authorities, information regarding an individual's citizenship or immigration status, lawful or unlawful, pursuant to 8 U.S.C. Section 1373. SB 54 is currently in its third reading on the Senate floor, after several amendments were made during the Senate Committee process.

## **DISCUSSION**

As stated above, although numerous jurisdictions have declared themselves to be sanctuary cities, there are many definitions and provisions which govern what the impact of such status will be on the community. When making a determination regarding whether to declare sanctuary city status, the City Council may consider several options for inclusion in its resolution. Components to be considered include

- 1) How to frame the declaration statement or definition, when determining whether to declare Culver City a sanctuary city; and
- 2) What is the scope of the resolution-is it a policy statement or direction to staff and law enforcement regarding their activities?

Both before and after the November 2016 presidential election, numerous concerns in regard to immigrants, equality, and racial and religious targeting were raised by the community at Council meetings and directly to the City's public officials. The City Council has already made statements regarding its commitment to protecting the safety, well-being and constitutional rights of all people. The City Council's 2016 Legislative and Policy Platform states that the City "commits to pursuing a policy agenda that affirms civil and human rights, and ensures that those targeted on the basis of race, religion, sexual orientation, or immigration status can turn to government without fear of recrimination."

On October 12, 2016, the City Council reaffirmed its policy goals, and adopted Resolution No. 2016-R099, condemning violence and hate speech, and expressing solidarity with those targeted for their ethnicity, race, religion or sexual orientation.

Also in response to community concerns, on November 22, 2016, Culver City Police Chief Scott Bixby issued a letter to the community, stating the current policies of the Culver City Police Department ("CCPD") as they relate to immigration and deportation. The Chief's letter expressed the Police Department's commitment to protecting everyone's rights, regardless of immigration status. The Chief also stated that the sole issue of one's immigration status is not a matter for CCPD.

The Chief reiterated that position at the February 13, 2016 City Council meeting. At that meeting, the Council requested that staff agendaize two items for the Council to consider: one, whether Council would support SB 54, and two, whether Council would declare Culver City a sanctuary city. City Council also requested that the Chief hold a community meeting to answer questions regarding the CCPD's current practices.

At the February 27, 2017 City Council meeting, the City Council adopted a Resolution in support of SB 54. Chief Bixby held a community meeting on March 15, 2017. During that meeting, in response

to community members' questions, the Chief stated that CCPD practices are consistent with the American Civil Liberty Union's ("ACLU") 9 Model State and Local Law Enforcement Policies and Rules (detailed further below under Possible Actions by Culver City).

#### Options for the City Council to consider

If the City Council determines that it wants to adopt a resolution with some type of declaration regarding its position on these issues, it should review options that it would like to include. These choices will reflect the policy direction of the Council.

Since there is no set definition, there are a number of different options ranging in scope and breadth for the City Council to consider what it means for Culver City to be a sanctuary city. One option is that the City may declare itself a sanctuary city as a policy statement to reaffirm its belief in defending human and civil rights. The City may also reaffirm its commitment to offering the protections of equal treatment, privacy and confidentiality to community members.

If the City Council decides it wishes to go further than a policy statement, another option for the Council is to give affirmative direction in this regard. Some cities have limited their law enforcement agency's sharing of an individual's detention status, release date (from jail), or other immigration information, except as required by law. Other cities have adopted policies prohibiting local authorities from asking about immigration status, or from investigating, arresting, or detaining individuals on immigration grounds. Others, such as the City of Malibu, have adopted a policy of prohibiting the use of city funds and resources to enforce federal civil immigration law, except as required by federal or state law, or court decision. Still others have committed to rejecting any offer by the federal government to enter into an agreement under Section 287(g) of the Immigration and Nationality Act (8U.S.C 1101 et seq.), which authorizes State and local law enforcement officials to perform the functions of immigration officers in relation to the investigation, apprehension, or detention of undocumented immigrants in the United States.

It is important to note that sanctuary policies do not prevent federal authorities from entering local jurisdictions and detaining, arresting, or deporting immigrants using federal resources and federal officers.

#### Possible actions by Culver City to include in a Resolution

Numerous statements and actions in regard to the City's stance on immigration issues have been proposed by various organizations and individuals, both inside and outside of the City. Some of the options available to the City Council are as follows:

- A. Declare Culver City to be a sanctuary city, in support and solidarity with other sanctuary jurisdictions, to make a policy statement reaffirming the City's commitment to welcome individuals with diverse backgrounds, and reaffirming the City's belief in protecting the human and civil rights of all individuals under the State and Federal Constitutions, regardless of immigration status.
- B. State that the City will act consistently with the ACLU's 9 Model State and Local Law Enforcement Policies and Rules, as follows:
  1. Judicial Warrant. City officials will require a judicial warrant before detaining an individual or prolonging a detention in any manner at the request of federal

immigration authorities;

2. No Facilitation. City officials will require a judicial warrant before arresting, detaining or transporting an individual solely on the basis of an immigration detainer or other administrative document;
  3. Defined Access. Unless pursuant to a court order or a legitimate law enforcement purpose unrelated to civil immigration law, City officials will not permit federal immigration authorities to access City facilities;
  4. Clear Identification. Requiring federal immigration authorities to wear jackets and badges when given access to City facilities, so that they are clearly identified as federal agents;
  5. Don't Ask. City officials will not inquire into the immigration status of any individual, unless there is a legitimate law enforcement purpose unrelated to civil immigration law, or where required by law to verify eligibility for a benefit or service;
  6. Privacy Protection. City officials will not voluntarily release personally identifiable information to federal immigration authorities, or information that may be used to ascertain an individual's race, religion or ethnicity, unless for a law enforcement purpose unrelated to the enforcement of civil immigration law;
  7. Discriminatory Surveillance Prohibition. City officials will not engage in surveillance of any person or group based solely on their actual or perceived religion, ethnicity, race or immigration status;
  8. Redress. Any person who alleges a violation of the above policies may file a written complaint with the City.
  9. Fair and Impartial Policing. City officials will not detain, interrogate, or arrest an individual based on their perceived race, national origin, religion, language or immigration status.
- C. Consider additional requests from Culver City Action Network and other sources, to include other City-wide directives in the resolution, such as:
1. That the Police Department accept foreign consular identification for immigrants who lack other documentation.
  2. That the Police Department avoid dispatching Culver City police cars to the scene of ICE actions in the City;
  3. That the City make a contribution to a county-wide effort such as the L.A. Justice Fund for legal assistance to residents facing deportation;
  4. That City officials provide information regarding legal assistance programs to residents who may be facing deportation.

As to the above suggestions C.1 and C.2 involving Police Department policies, these were raised at the March 15<sup>th</sup> community meeting, and the Police Department has policies and practices relating to these issues which may differ in some ways from what has been proposed. The Chief believes CCPD current policies are appropriate to ensure and protect the public safety.

Two different Resolutions are attached; one making a policy statement (Option A above) declaring the City to be a sanctuary City, and the second (Option A and Option B combined) containing more detail, listing the ACLU affirmative statements, so that Council may determine the scope of the resolution desired. If Council desires to include any other statements in the Resolution, those could be included in the Motion, with direction for the resolution to be signed with modifications.

It is extremely difficult to opine as to whether some of the provisions in the detailed resolution and the directives contained therein will make the resolution more open to challenge by federal authorities, or even if the first option of a general statement would qualify Culver City as a “sanctuary jurisdiction” as determined by federal authorities. Certainly, any kind of direction which does not comply with the Executive Order, Section 1373, or any future federal directives, will need to be evaluated, as more information becomes available from other legal authorities and the courts.

### **FISCAL ANALYSIS**

There is a possibility of negative fiscal impacts resulting from declaring the City to be a sanctuary city due to President Trump’s January 25, 2017 Executive Order, as discussed above. The extent of any impact is unknown at this point since the federal administration has not yet enforced the order against any local jurisdictions. In addition, the outcome of the San Francisco and Santa Clara lawsuits challenging the right to withhold funds could impact whether any funds would be at risk.

In fiscal year 2015-2016, the City received \$ 6,267,299 in federal funds, across all City departments and programs.

### **ATTACHMENTS**

1. 2017-03-27 ATT Proposed Resolution Sanctuary City
2. 2017-03-27 ATT Proposed Resolution Sanctuary City with Detailed Statements

### **MOTION**

That the City Council:

1. Adopt a Resolution declaring Culver City to be a sanctuary city;

OR

2. Adopt a Resolution declaring the Culver City to be a sanctuary city with specific affirmative statements and actions, as determined by City Council;

OR

3. Provide alternate direction to the City Manager as deemed appropriate.