


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY CITY ATTORNEY RYAN RICHARDSON

RESOLUTION DELEGATING AUTHORITY TO THE CITY ATTORNEY OR THEIR DESIGNEE TO FACILITATE AND AUTHORIZE THE LEGAL DEFENSE OF CITY OFFICERS AND EMPLOYEES IN CRIMINAL PROCEEDINGS FOR ACTS OR OMISSIONS WITHIN THE SCOPE OF THEIR OFFICIAL DUTIES UPON MAKING THE FINDINGS REQUIRED BY GOVERNMENT CODE SECTION 995.8 AND SUBJECT TO RATIFICATION BY THE CITY COUNCIL AS SOON AS PRACTICABLE

WHEREAS, public entities are generally required to defend their employees in civil actions, but are not required to defend employees in criminal actions; and

WHEREAS, Government Code section 995.8 allows, but does not require, a public entity to provide a legal defense in a criminal action if:

- (a) The criminal action or proceeding is brought on account of an act or omission in the scope of his employment as an employee of the public entity; and
- (b) The public entity determines that such defense would be in the best interests of the public entity and that the employee or former employee acted, or failed to act, in good faith, without actual malice and in the apparent interests of the public entity; and

WHEREAS, SB 54, the California Values Act, restricts state and local law enforcement and limits cooperation with federal immigration authorities for immigration enforcement purposes; and

WHEREAS, the City's Sanctuary City Ordinance, [13515 C.M.S.](#) provides that, subject to narrow exceptions, the City does not provide law enforcement assistance to the Department of Immigration and Customs Enforcement (ICE) and

WHEREAS, given the threat of prosecution against City officials and employees for merely complying with applicable state law, local law, or City policy, it may be in the best interests of the City to provide a defense for those City officers and employees who are acting in good faith to perform their official duties in compliance with applicable laws or City policies; and

WHEREAS, circumstances resulting in the need for criminal defense can arise quickly and unexpectedly and, in such circumstances, time may be of the essence. It may be in the best interests of the City to begin providing a criminal defense without having to wait for the City Council to authorize such a defense because waiting could prejudice the City official or employee facing criminal charges, could hinder them in continuing to perform their official duties, and could have a chilling effect on other City officials and employees in the performance of their own official duties. By this Resolution, the City Attorney can act immediately to determine that the defense of a criminal proceeding is appropriate and assign qualified criminal defense counsel in a timely manner; and

WHEREAS, the City Council desires to delegate authority to the City Attorney to facilitate providing City officers and employees with a legal defense in a federal criminal action or proceeding for acts taken within the scope of performing official City duties, provided the City Attorney makes certain findings and seeks ratification by the City Council as soon as practicable. The criminal charges against a City official or employee could be related to immigration enforcement activities, as described above, but could also be related to other types of activities; and

WHEREAS, other jurisdictions such as the City of San Jose, Santa Clara County and the City of West Hollywood have taken similar actions to delegate authority under Government Code section 995.8; now, therefore, be it

RESOLVED: That the City Council hereby delegates authority to the City Attorney or their designee to facilitate and authorize the legal defense of City officers and employees in criminal proceedings for acts or omissions within the scope of their official duties upon making the findings required by Government Code Section 995.8 and subject to ratification by the City Council as soon as practicable.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROWN, FIFE, GALLO, HOUSTON, RAMACHANDRAN, UNGER, WANG, AND
PRESIDENT JENKINS

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____

ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California