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OFFICE OF THE CITY CLERK
OAKLAND

2018 OCT 18 PM 5: 20

AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Joe DeVries
Chief Privacy Officer

SUBJECT: Oakland Sanctuary City Ordinance-
Corrected

DATE: October 23, 2018

City Administrator Approval

Date:

10/18/18

RECOMMENDATION

Staff Recommends That City Council Adopt The Oakland Sanctuary City Ordinance Amending Resolution Numbers 63950, 80584 And 86498 C.M.S. In Order To Strengthen The Sanctuary City Policy Of The City Of Oakland Not To Cooperate With Or Provide Support For Federal Immigration Agencies, Based Upon Resolution 87036 C.M.S.

EXECUTIVE SUMMARY

The City Council adopted Resolution No. 87036 C.M.S. in January 2018 which states that the Oakland Police Department shall not provide law enforcement assistance, including traffic support, to ICE, including any subdivision of ICE, in any capacity except to respond to a public safety emergency related to an ICE action or where assistance is required by Federal or State statute, regulation or court decision. The resolution also reaffirmed Resolution No. 63950 C.M.S., the Refuge City Resolution, that passed in 1986 and Resolution No. 86498 C.M.S., which affirmed Oakland as a Sanctuary City in 2016. Resolution No. 87036 C.M.S. also supplements Resolution Nos. 80584 and 86498 C.M.S. both of which state, in part, that the Oakland Police Department will only cooperate with Immigration and Customs Enforcement (ICE) in criminal matters and issues of public safety.

When City Council adopted Resolution No. 87036 C.M.S. there was an additional motion directing staff to return to Council with an Ordinance that would codify the resolution into an Ordinance. Adoption of the Oakland Sanctuary City Ordinance (**Attachment A**) will do so.

BACKGROUND/LEGISLATIVE HISTORY

Oakland first declared itself a Refuge City in 1986 to articulate its support for its immigrant community. Since then there have been a series of resolutions adopted to reaffirm the City's belief that over-reach by federal immigration authorities has a negative impact on Oakland neighborhoods and therefore local law enforcement should not support those efforts. A key distinction regarding enforcement efforts is that immigration officials are most often enforcing civil law, not criminal law, and many of the individuals they target are only accused of violating civil immigration rules, not crimes that pose any significant public safety risk. The effect on immigrant communities if local law enforcement were to assist federal authorities would be to

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create an atmosphere of fear and distrust in local government; causing many immigrants to fail to report when they are victims of serious crimes that warrant further investigation. Furthermore, fear of law enforcement has a chilling effect on people's willingness to participate in civic opportunities such as their neighborhood community policing program where they could partner with their neighbors to improve their community.

Although the Oakland Police Department has not participated in civil immigration enforcement efforts, the department has been called upon to assist in situations where federal immigration officials are executing warrants for people suspected of serious crimes. In those instances, it had been the policy of the department to provide perimeter support, including traffic control to ensure the safety of the surrounding community.

With the Trump Administration's stepped up efforts at pursuing undocumented immigrants in declared Sanctuary Cities, there have been instances both in Oakland and elsewhere in California where the distinction between civil and criminal law enforcement has become blurred. Federal authorities have sought local assistance on the pretense that they are executing arrest warrants for violent criminals but the outcome of some of those operations has been only to detain and deport people who had no criminal record but instead only had questionable legal status.

Resolution No. 87036 C.M.S. clarifies that the Oakland Police Department will not provide any support to Federal Immigration Authorities, regardless of the stated purpose of the operation to ensure that there is no possibility that the department is assisting in the enforcement of civil immigration law. It only allows for OPD to respond to a public safety emergency. If the department does participate in an operation, it requires that a written report of the action be provided to the Public Safety Committee soon thereafter.

Adoption of the Oakland Sanctuary City Ordinance will codify the intent and direction of Resolution No. 87036.

FISCAL IMPACT

There is no fiscal impact associated with the adoption of this ordinance.

PUBLIC OUTREACH/INTEREST

This Ordinance evolved out of ongoing discussions and a recommendation made by the Privacy Advisory Commission.

COORDINATION

Staff coordinated with the City Attorney's Office and Budget Bureau in drafting the Ordinance.

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SUSTAINABLE OPPORTUNITIES

Economic: The information presented in this report presents no economic impact.

Environmental: There are no environmental opportunities identified in this report.

Social Equity: The adoption of the Sanctuary City Ordinance provides residents with an assurance that their tax dollars are not being used to support Federal Immigration Authorities enforcement efforts. This will further affirm Oakland's status as a Sanctuary City.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that City Council adopt the Oakland Sanctuary City Ordinance supplementing and amending Resolutions 63950, 80584 and 86498 in order to strengthen the policy of the City of Oakland not to cooperate with or provide support for federal immigration agencies, based upon resolution 87036.

For questions regarding this report, please contact Joe DeVries, Assistant to the City Administrator at (510) 238-3083.

Respectfully submitted,



Joe DeVries
Assistant to the City Administrator
City Administrator's Office

~~Attachment A - Oakland Sanctuary City Ordinance~~

2018 OCT 11 PM 4:03

[Signature]
City Attorney's Office

OAKLAND CITY COUNCIL

ORDINANCE _____ C.M.S.

INTRODUCED BY
City Councilmembers Kaplan, Brooks and Gallo

ORDINANCE AMENDING RESOLUTION NUMBERS 63950, 80584 AND 86498 IN ORDER TO STRENGTHEN THE SANCTUARY CITY POLICY OF THE CITY OF OAKLAND NOT TO COOPERATE WITH OR PROVIDE SUPPORT FOR FEDERAL IMMIGRATION AGENCIES, BASED UPON RESOLUTION 87036

WHEREAS, the City of Oakland has a strong tradition of embracing and valuing diversity and respecting the civil and human rights of all residents regardless of their immigration status; and

WHEREAS, Oakland has been on record as a City of Refuge since July 8, 1986, when it adopted Resolution No. 63950; and

WHEREAS, Oakland reaffirmed its status as a Sanctuary City on November 29, 2016 when it adopted in Resolution No. 86498, which stated "the City Council's desire to ensure that its immigrant residents participate in civic life and daily activities without fear of being arrested or reported to the United States Immigration and Customs Enforcement (ICE) agency;" and

WHEREAS, the Trump Administration is working to vilify municipalities who choose to protect aspiring citizens in an effort to browbeat them into enforcing federal immigration law; and

WHEREAS, under Acting ICE Director Thomas Homan, ICE agents have been targeting immigrants with no criminal record at all and flouting longstanding ICE policy against conducting arrests in sensitive locations like schools and churches; and

WHEREAS, ICE Director Homan has stated that "[s]anctuary jurisdictions ...creat[e] a magnet for illegal immigration. As a result, ICE is forced to dedicate more resources to conduct at-large arrests in these communities;" and

WHEREAS, Oakland is proud to be one of a growing number of municipalities around the country standing up to threats against privacy and liberties by taking

meaningful steps to ensure that communities are safe, and that the rights of all residents are respected, so that our City may continue to thrive; and

WHEREAS, on June 1, 2017, the Privacy Advisory Commission voted unanimously to recommend to the City Council that the cooperation agreement between the Oakland Police Department ("OPD") and ICE, be rescinded; and

WHEREAS, on July 18, 2017, Oakland City Council unanimously passed Resolution No. 86860 by Councilmember Kaplan, which "direct[ed] the City Administrator to immediately terminate the agreement with 'ICE'"; and

WHEREAS, in Resolution No. 86860, Oakland City Council declared that "the presence of ICE in Oakland is causing trauma in the community, and causing a chilling effect that weakens cooperation with local law enforcement;" and

WHEREAS, the Oakland Police Department provided traffic control for an ICE operation in West Oakland on August 16, 2017; and

WHEREAS, Councilmembers Brooks and Kaplan requested that the Oakland Police Department provide an Informational Report regarding its role in the ICE operation that occurred in West Oakland on August 16, 2017. OPD's responsive report took the position that "OPD has fully complied with all City of Oakland resolutions concerning the status of Oakland as a sanctuary city in immigration actions;" and

WHEREAS, Resolutions No. 80584 and 86498 both provided, in part, "[t]hat in accordance with state and federal laws the Oakland Police Department will continue to cooperate with federal immigration agencies in matters involving criminal activity and the protection of public safety;" and

WHEREAS, on November 8, 2017, the Privacy Advisory Commission approved a motion recommending that Oakland City Council adopt the following policy: "OPD shall not provide law enforcement assistance to ICE in any capacity. This shall not prevent OPD from responding to a public safety emergency related to an ICE action; in such event OPD shall explain the facts giving rise to its action in a written report to the Public Safety Committee at the earliest opportunity;" and

WHEREAS, the City Council adopted Resolution 87036 which supplements and amends Resolutions 63950, 80587, and 86498 in order to strengthen the policy of the City of Oakland not to cooperate with or provide support for immigrations and customs enforcement actions on January 16, 2018; and

WHEREAS, Oakland City Council wishes to make clear that no City of Oakland resources shall go towards assisting or cooperating with any investigation, detention, or arrest procedure or operation, public or clandestine ICE, including any subdivision of ICE, regardless of ICE's stated purpose for the procedure or operation;

NOW, THEREFORE, THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1. Definitions.

- A. This Ordinance shall be known as the Oakland Sanctuary City Ordinance.
- B. OPD means City of Oakland Police Department.
- C. ICE means any employee, member, agent, or representative of the federal Department of Immigration and Customs Enforcement.

Section 2. Prohibitions.

- A. OPD employees shall not provide law enforcement assistance, including traffic support, to ICE, including any subdivision of ICE, in any capacity except to respond to a public safety emergency related to an ICE action or where assistance is required by Federal or State statute, regulation or court decision.
- B. In the event OPD assists in an ICE investigation, detention, arrest or any other operation, OPD shall explain the facts giving rise to its action in a written report to the Public Safety Committee at the earliest opportunity.
- C. This Ordinance codifies Resolution 87036 and supplements Resolutions 63950, 80584 and 86498.

Section 3. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

Section 4. Effective Date. This Ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise, it shall become effective in accordance with the law.

IN COUNCIL, OAKLAND, CALIFORNIA

PASSED BY THE FOLLOWING VOTE:

AYES: BROOKS, CAMPBELL WASHINGTON, GALLO, GIBSON McELHANEY, GUILLEN, KALB,
KAPLAN and PRESIDENT REID

NOES:

ABSENT:

ABSTENTIONS:

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

Date of Attestation: _____

2367990v1

NOTICE AND DIGEST

ADOPT THE OAKLAND SANCTUARY CITY ORDINANCE AMENDING RESOLUTION NUMBERS 63950, 80584 AND 86498 C.M.S. IN ORDER TO STRENGTHEN THE SANCTUARY CITY POLICY OF THE CITY OF OAKLAND NOT TO COOPERATE WITH OR PROVIDE SUPPORT FOR FEDERAL IMMIGRATION AGENCIES, BASED UPON RESOLUTION 87036 C.M.S.

This Ordinance codifies the City's Sanctuary City policy of non-cooperation with Immigrations and Customs Enforcement except in emergencies.