



**DATE:** October 24, 2017

**CATEGORY:** New Business

**DEPT.:** City Manager's Office

**TITLE:** **Sanctuary City and Anti-Registry Policy Considerations**

### **RECOMMENDATION**

In light of recently enacted State laws, staff recommends Council take no further action beyond State law and existing City policies related to sanctuary city and anti-registry policies.

### **BACKGROUND**

Various community members and organizations petitioned the City Council to adopt anti-registry, sanctuary city, and "Freedom Cities" policies during the Fiscal Year (FY) 2017-18 City Council goal-setting process. A central inspiration for these requests was the trepidation around the impacts that proposed Federal policy changes would have on immigrant and religious communities. On May 16, 2017, as part of the City Council Major Goal to "Promote Strategies to Protect Vulnerable Populations and Preserve the Socioeconomic and Cultural Diversity of the Community," Council prioritized studying an anti-registry policy, becoming a sanctuary city, and the American Civil Liberties Union (ACLU) Freedom Cities policy.

Council discussed the ACLU Freedom Cities policy on September 12, 2017 and supported the Police Department's updated Immigration Violation Enforcement Policy, which incorporates many of the policy points. On October 5, 2017, the State of California enacted a sanctuary jurisdiction law—Senate Bill 54: the California Values Act; and on October 15, 2017, the Governor signed an anti-registry law—SB 31: the California Religious Freedom Act. This report explores anti-registry and sanctuary city policy considerations.

## ANALYSIS

### Policies and State Law Addressing Religious and Ethnic Registries

While campaigning for the 2016 presidential election, Donald Trump called for a Muslim registry and hinted that he would revive the National Security Entry-Exit Registration System (NSEERS), which required noncitizen men from certain Muslim-majority countries living in the United States to register and continuously update the government about their whereabouts. Policymakers, civil liberties groups, and various others have been outspoken in their opposition to religious and ethnic registries.

Various local jurisdictions, including Menlo Park and San Francisco, have passed ordinances preventing their jurisdictions from contributing to such registries. On June 20, 2017, the Santa Clara County Board of Supervisors passed the “Noncooperation with Identity-Based Registrations” Resolution (BOS-2017-84), which prohibits the County from participating in or contributing to any type of government registry based on religion, ethnicity, national origin, sexual orientation, gender identity, or any other classification protected by the California or United States Constitution.

#### Senate Bill 31

Governor Brown signed Senate Bill 31—the California Religious Freedom Act—an urgency law against religious and ethnic registries—on October 15, 2017. The bill takes effect immediately. Among other things, SB 31 prohibits state and local agencies and their employees from providing or disclosing to the Federal government personal information regarding a person’s religious beliefs, practices, or affiliation when the information is sought for compiling a database of individuals based on religious belief, practice, or affiliation, national origin, or ethnicity for law enforcement or immigration purposes.

SB 31 also prohibits state and local agencies from using agency resources to assist with any government program compiling such a database, or from making existing databases available in connection with an investigation or enforcement under a registry. Law enforcement agencies are prohibited from collecting personal information regarding religious beliefs, practices, or affiliation of any individual, except as part of a targeted investigation or where necessary to provide religious accommodations. The bill prohibits law enforcement agencies from using agency resources (moneys, facilities, property, equipment, or personnel) to investigate, enforce, or assist in the investigation or enforcement of any criminal, civil, or administrative violation, or warrant for a violation, of any requirement that individuals register with the Federal government or any Federal agency based on religion, national origin, or ethnicity. The collection,

retention, or disclosure of personal information or documents as required by Federal law or court order is allowed.

### **Sanctuary Jurisdiction Policies**

A frequent motivation of sanctuary jurisdictions is a belief that limiting their involvement in Federal immigration enforcement improves public safety and civic engagement in their communities by creating an environment where people feel comfortable reporting crimes and accessing local services without fear of deportation. Opponents of sanctuary jurisdictions believe that the jurisdictions harbor criminals and increase crime; often citing anecdotes of crimes that have been committed by undocumented immigrants.

Many Bay Area jurisdictions identify as sanctuary jurisdictions, including San Francisco, Alameda, and Santa Cruz Counties, as well the cities of Oakland and San Jose. While there is no specific definition of a sanctuary city/jurisdiction, the primary characterization of sanctuary jurisdictions is that they limit their involvement in Federal immigration law enforcement. Sanctuary jurisdictions also commonly refrain from questioning the nationalization or residency status of persons they serve and offer local services regardless of the recipient's citizenship status.

When an individual is booked into custody by a law enforcement agency, their biometric data is routed through Federal databases to the Federal Bureau of Investigation (FBI). The FBI shares this information with Immigration and Customs Enforcement (ICE). If ICE suspects the individual is a removable undocumented immigrant, ICE sends a detainer request to the law enforcement agency. Detainers ask that law enforcement agencies notify ICE as early as practicable before the individual is released from criminal custody and to detain suspected undocumented immigrants up to 48 hours beyond the time when they would otherwise be released in order for ICE agents to assume custody.

Section 287(g) of the Immigration and Nationality Act gives local law enforcement agencies the ability to have officers deputized to enforce immigration law. The Department of Homeland Security (DHS) and state or local police departments must enter into a Memorandum of Agreement to deputize local officers as immigration agents. If a local police officer deputized by ICE makes a traffic stop, they can ask the driver about their immigration status and arrest the driver if they are in the country illegally. Sanctuary jurisdictions typically have policies that prohibit honoring ICE detainer requests and forbid local agents from serving as deputized immigration officers.

The Federal government opposes sanctuary jurisdiction policies and has issued an executive order in an attempt to limit fiscal resources provided through grants to sanctuary jurisdictions. Legal challenges have been brought against the Federal government's attempt to limit financial grants to sanctuary jurisdictions, and this is the subject of ongoing legal challenges in the courts. The City is participating in amicus briefs regarding these challenges.

While local jurisdictions can limit their participation in Federal immigration enforcement, they cannot prevent Federal agencies from conducting immigration enforcement operations within their communities. In fact, ICE representatives assert that sanctuary jurisdictions receive more of their attention. ICE recently conducted an immigration enforcement effort dubbed "Operation Safe City" from September 25 through 28, 2017. According to ICE, the operation focused on cities and regions where ICE deportation officers are denied access to jails and prisons to interview suspected immigration violators or jurisdictions where ICE detainers are not honored. The operation resulted in 498 arrests for Federal immigration violations nationwide. Twenty-seven (27) of these arrests were made in Santa Clara and San Francisco Counties; two (2) arrests were made in Mountain View.

#### Senate Bill 54

On October 5, 2017, Governor Brown signed SB 54 – the California Values Act – into law and it becomes effective on January 1, 2018. SB 54 is akin to a sanctuary jurisdiction policy for the entire State of California as it establishes boundaries for State and local law enforcement agencies' participation in Federal immigration enforcement. Under the law, local agencies are prohibited from detaining individuals for immigration purposes. Local agencies are also generally prohibited from providing release date information of individuals held in custody or transferring individuals to immigration authorities unless a judicial warrant or judicial probable cause exists, except officers have discretion to provide this information or transfer an individual when they are a serious or violent felon; are convicted felons punishable by State imprisonment; are convicted within five years of certain misdemeanors; are convicted within 15 years of specified felonies; are a sex offender or arson registrant; or are an aggravated felon or have an outstanding felony arrest warrant.

SB 54 also prohibits law enforcement officers from asking people about their immigration status or arresting people on civil immigration warrants, and performing or assisting immigration authorities with their duties as immigration officers (which includes border-patrol activities) or acting as deputized immigration enforcement agents. Local law enforcement agencies are prohibited from using immigration authorities as interpreters; providing office space exclusively dedicated for immigration

authority use within a City law enforcement facility; and contracting with the Federal government to house Federal detainees. Annual reporting is required when the local law enforcement agency participates in a joint task force with a federal agency and uses dedicated resources on an ongoing basis.

SB 54 does authorize various activities so long as these activities do not violate local policy. Local agencies may investigate and detain upon reasonable suspicion or arrest an individual for violation of reentry of illegal immigrants that are subject to enhanced penalties for reentry when detected during unrelated police activity; respond to ICE requests regarding criminal history through California Law Enforcement Telecommunications System (CLETS); participate in joint task force investigations (non-immigration related) and sharing of related information if specific conditions are met; make inquiries necessary to certify individuals for specific visas or comply with sale or disposition of firearm and ammunition requirements; and provide immigration authorities access to interview individuals in police custody (in conformance with the TRUTH Act).

SB 54 expressly addresses compliance with 8 U.S.C.S. 1373 by providing that SB 54 does not prohibit a government entity from sending to, or receiving from, Federal immigration authorities, information regarding the citizenship or immigration status, lawful or unlawful, of an individual pursuant to 8 U.S.C.S. 1373. Further, SB 54 does not address the provision of electronic fingerprint records for all offenders booked into State and local jails to the FBI and DHS.

### **Potential Policies in Mountain View**

Policies against religious and ethnic registries and sanctuary jurisdiction policies are consistent with Council's Federal Legislative Priorities and Issues for 2017, which included a statement of concern regarding Federal immigration policy, reinforcing that the City values the diversity of the Mountain View community and supports policies that protect the rights of all residents. Such policies are also consistent with the City's Human Rights City Designation and Equitable Communities Resolution.

Mountain View has no explicit local policy against religious and ethnic registries or an official sanctuary city policy; however, the Police Department's updated Immigration Violation Enforcement Policy (Attachment 1) includes many components consistent with sanctuary jurisdiction policies, and the Equitable Communities Resolution (Attachment 2) affirms the City's commitment to protect minority constituents regardless of race, gender, class, religion, sexual orientation, or disability, and advance the City's commitment to safety and equity across communities in the wake of the Federal government's new policies on immigration enforcement.

With the State's adoption of SB 31 and SB 54, Mountain View is already subject to most major components of the model sanctuary city and anti-registry policies. Should Council will to go further than existing City policies and State law, a Mountain View sanctuary city and/or anti-registry ordinance/resolution could expand upon the components of SB 31 and SB 54 to further assert the City's position on Federal immigration enforcement and religious/ethnic registration efforts. Attachment 3 contrasts SB 31 to other city ordinances and a model anti-registry ordinance. Additional policy considerations beyond SB 31 include:

1. Expanding the classes of personal information which are prohibited from being part of a registry to include citizenship status, immigration status, gender, gender identity, sexual orientation, and race.
2. Prohibit agency resources from being used to detain, relocate, or intern an individual based upon their religion, national origin, or ethnicity.
3. Enforcement provisions, which would authorize enforcement for alleged violations of an adopted ordinance (including civil actions for the City's failure to comply with an adopted ordinance). This would only be applicable if Council were interested in adopting an ordinance further addressing anti-registry concerns.

Staff does not recommend further revisions beyond SB 31 and existing policies to address anti-registry concerns. While the City does not have an express policy prohibiting this information from becoming part of a registry or use of resources to detain, relocate, or intern individuals, the City's Equitable Communities Policy does address the City's commitment to work to ensure the rights and privileges of all, regardless of religion, country of birth, immigration status, disability, gender, sexual orientation, or gender identity are protected. This policy also specifies the City's lack of tolerance for discrimination based on race, national origin, ethnicity, religion, age, gender, sexual orientation, color, or disability.

Attachment 4 contrasts SB 54 to a model sanctuary ordinance. Staff has identified the following areas where local agencies are given the discretion to adopt more stringent local policies:

1. Further restrict the provision of release dates or response to notification requests for individuals held in custody.

2. Further restrict the prohibition of a transfer of an individual to ICE absent a judicial warrant or judicial probable cause.
3. Restrict the investigation, enforcement, detainment upon reasonable suspicion, or arrest of an individual for violation of reentry of illegal immigrants that are subject to enhanced penalties for reentry when detected during unrelated PD activity.
4. Restrict the response to immigration authority requests regarding criminal history through CLETS.
5. Restrict participation in a joint task force investigation with a federal law enforcement agency and sharing of information related if specific conditions met (non-immigration related).
6. Restrict the ability to inquire as necessary to certify individuals for specific visas or comply with sale/disposition of firearm and ammunition requirements.
7. Limit the access provided to immigration authorities to interview individuals in PD custody, in conformance with the TRUTH Act.

Staff does not recommend these restrictions beyond State law and existing policy. The Police Chief believes the City's existing policies adequately prohibit our local policing resources from being utilized to enforce Federal civil immigration law and ensure individual civil liberties, regardless of immigration status, are protected. Furthermore, the Police Department policy already addresses this and limits immigration authority access to the Police Department to instances in which a judicial warrant is presented or for the provision of services unrelated to immigration law.

Additional actions could include:

8. Prohibit conditioning the provision of City benefits, opportunities, or services on immigration status unless required by law.
9. Review policies and ensure information collected from individuals is limited to that which is necessary to perform agency duties.
10. Remove from applications, interview forms, and questionnaires questions regarding immigration status unless required by law.
11. Prominently display information on immigrant rights to access services.

12. Allow for the presentation of an identity document by the individual's nation of origin when a driver's license or identification card is an acceptable form of evidence of identification (does not apply to Federal I-9 form).

These items have all been included in the model sanctuary city ordinance and Council could direct staff to return with an action to enact them.

### **FISCAL IMPACT**

The fiscal impacts are unknown at this time. The Federal government may restrict certain grants to sanctuary jurisdictions. The Police Department receives approximately \$28,000 in Department of Justice grants that could be at risk. Because SB 54 makes California a sanctuary state, the Federal government's treatment to local jurisdictions is unknown.

### **ALTERNATIVES**

1. Direct staff to prepare a resolution to adopt policies 8-12.
2. Identify specific anti-registry policies 1-3 and/or sanctuary city policies 1-12 and direct staff to develop a resolution that implements them.
3. Provide other direction.

**PUBLIC NOTICING** – Agenda posting, notice on social media, and notices sent to stakeholders who have communicated with the City on these issues and provided contact information.

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- Attachments:
1. MVPD Immigration Violation Enforcement Policy
  2. Equitable Communities Resolution
  3. SB 31 Comparison to Model Policy Language
  4. SB 54 Comparison to Model Policy Language
  5. Model Sanctuary Ordinance
  6. Model Anti-Registry Ordinance