



**DATE:** September 12, 2017

**CATEGORY:** New Business

**DEPT.:** Police

**TITLE:** Freedom Cities and Immigration Violation Enforcement Policies Update

### **RECOMMENDATION**

Discuss local immigration enforcement issues and accept recent changes to the Police Department's General Order regarding the Immigration Violation Enforcement Policy in accordance with the model Countywide policy adopted by the Santa Clara County Police Chief's Association.

### **BACKGROUND**

The Police Department has had a long-standing policy limiting its role in enforcing violations of Federal immigration laws, to include prohibiting participation in sweeps, or making arrests based solely upon administrative detainers. The Police Department's involvement in immigration violation enforcement has been limited to cases that involve criminal investigations. The Police Department first adopted such an internal policy in 2005, and the practice was in existence for at least 10 years prior to the formal policy.

Following President Trump's January 25, 2017 Executive Order, "Enhancing Public Safety in the Interior of the United States," some residents and local officials across the United States became concerned that local law enforcement would be required to assist with civil immigration enforcement or communities could potentially face the loss of Federal grant funding. This prompted action from various local governments, as well as immigrant rights and civil liberties groups.

On January 31, 2017, the City Council adopted its Federal Legislative Priorities and Issues for Fiscal Year 2017-18, 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.

On February 23, 2017, the County of Santa Clara filed a lawsuit seeking a nationwide preliminary injunction banning enforcement of the Executive Order on a variety of Federal constitutional grounds. The City joined a “friend of the court” brief filed in support of this action.

On March 9, 2017, the Santa Clara County Police Chiefs’ Association adopted a policy statement that reinforced a Countywide philosophy that local law enforcement would not enforce Federal civil immigration laws. The Association also embarked on an effort to standardize the various department policies within the County.

At its meeting on May 23, 2017, the City Council adopted a Resolution supported by the Cities Association of Santa Clara County, “Reaffirming the City’s Commitment to a Diverse, Supportive, Inclusive Community and to Protecting the Constitutional Rights of Its Residents” (Attachment 1).

The American Civil Liberties Union (ACLU) has launched the “Freedom Cities” campaign that includes nine policy points for local law enforcement agencies to consider regarding immigration violation enforcement (Attachment 2). In April and August, the Police Chief met with a group of residents and ACLU representatives to discuss these policy points. At that time, the Police Department’s existing Immigration Violation Enforcement Policy, contained in the departmental General Orders, already incorporated the vast majority of the “Freedom Cities” points, but there were a few distinctions that members of the “Freedom Cities” campaign suggested be adopted.

As part of the Council’s two-year goal-setting process, the Council adopted the goal to “Promote Strategies to Protect Vulnerable Populations and Preserve the Socioeconomic and Cultural Diversity of the Community.” On May 16, 2017, Council prioritized studying an anti-registry policy, becoming a sanctuary city, and the Freedom Cities policy.

The Santa Clara County Police Chiefs’ Association drafted a model Countywide policy regarding immigration enforcement and considered the “Freedom Cities” policy points, as well as perspectives from other community members, during the process. The County Police Chiefs’ Association adopted a model policy on July 13, 2017 (Attachment 3). The Police Department immediately modified the General Order on immigration enforcement to incorporate the model policy. General Orders are part of an internal policy manual which establish expectations for courses of action in specified situations.

A side-by-side comparison of the “Freedom Cities” policy points and updated Police Department policy is included in Attachment 4.

## ANALYSIS

The Federal government has the exclusive authority to enforce the civil provisions of Federal immigration law. Existing law generally allows the Federal government to permit, but not require, the assistance of local officials in such efforts. Immigration and Customs Enforcement (ICE) seeks to rely upon cooperation or notification from local law enforcement to the extent practicable and allowed by state and local laws. Refusing to provide such notice or cooperation limits but does not prevent ICE from enforcing Federal immigration laws, but with the new executive order, the Federal government intends to penalize cities and counties who do not proactively support the Federal government's efforts by withholding grant funding.

The Police Department provides a policing approach that safeguards all of the residents of Mountain View, to include the expressed need to ensure an environment that does not hinder reporting of crime that could otherwise have a negative consequence on the broader community, regardless of immigration status. Cooperation with ICE may be appropriate in certain criminal investigations, or in the capture of a criminal offender, but the Department maintains its long-standing philosophy to not use local resources to enforce Federal civil immigration law. As a general rule, Officers do not ask the immigration status of people they contact.

The newly adopted regional immigration violation enforcement model policy continues to limit the Police Department's role in civil immigration law enforcement and appropriately governs its interactions with ICE. It defines various immigration status classifications, as well as distinguishes civil detainers from judicial warrants. It requires a clear nexus to judicial warrants and criminal activity for Mountain View peace officers to conduct enforcement action, and it reinforces practices that are consistent with the Police Department's expectation for fair and impartial policing, which recognizes the dignity of all persons, regardless of actual or perceived immigration status.

In order to reach a balance between assuring the confidence of those the Police Department serves while at the same time addressing the presence of criminal offenders, the policy does provide for the ability for Officers to cooperate with ICE when criminal offenders of serious crimes are undocumented aliens, or in the course of certain criminal investigations, such as human trafficking cases, to ensure undocumented aliens who are victims of crime receive appropriate services. Retaining an ability to work with ICE in criminal investigations is important to effective community policing and public safety.

Under the new policy, any notifications initiated by the Department to ICE must be approved by a member of command staff prior to being completed. In conjunction with

this practice and consistent with prevailing law, the Police Department will also share information with ICE if requested where that information would otherwise be communicated with other law enforcement agencies or is publicly available.

One of two areas that the policy and the “Freedom Cities” policy points differ include requiring ICE agents to identify themselves or to wear duty jackets and to make badges visible at all times while in the Police Department’s facility. This provision was not included in the Countywide policy for three reasons. First, this provision contradicts the policy’s prohibition of ICE agents having access to people in the Police Department’s custody when such access is for civil immigration law enforcement purposes. Second, in those instances when an ICE agent speaks to an undocumented person to offer nonenforcement services or to investigate a crime, immediately identifying the ICE agent could hamper that process. Finally, this provision is not enforceable against employees of outside agencies who are not obligated to comply with policies exclusive to the Police Department.

The second area where the policy differs is the “Freedom Cities” privacy protection rule. This suggested provision would prevent the voluntarily release of personally identifiable data or information to ICE, such as custody status, release date, home address, and race or ethnicity. This policy suggestion was not adopted because it includes information that is largely publicly available, it would require Police personnel to inquire about the purpose of the request with another law enforcement agency that is not verifiable, and such inquiries to the Police Department are infrequent since the Police Department only detains people on a temporary basis.

In December 2016, California Senate Bill 54 was introduced and remains under consideration. This legislation would prohibit local law enforcement from performing the functions of a Federal immigration officer and would create “safe zones” throughout the State by prohibiting immigration enforcement in certain public areas. The bill is also expected to remove a State law requirement for local law enforcement to notify ICE of a person in their custody in certain circumstances. If signed into law, this bill could modify the adopted policy.

Should Senate Bill 54 retain provisions preventing ICE agents from taking custody of subjects in a secure State or county jail facility, ICE agents will likely revert to attempting to locate and arrest people they are searching for in the community. This could increase incidental contacts with other undocumented people not wanted by Federal authorities and who would have otherwise not been contacted by Federal agents. This potential impact to the local community would not change the model policy’s direction that restricts local peace officers from engaging in civil immigration

enforcement actions, but it could increase the requests for support related to maintaining public safety.

### **FISCAL IMPACT**

Potential loss of about \$28,000 in Federal justice grants should the Federal government impose sanctions for not proactively supporting civil immigration law enforcement.

### **CONCLUSION**

The “Freedom Cities” policy points are intended to protect the civil liberties of people, including undocumented individuals, and to promote “smart policing” that puts local communities first. The Police Department’s policies and practices, including its immigration violation enforcement policy that is based on the Countywide model, incorporates these protections and meets or exceeds seven of the nine “Freedom Cities” policy point suggestions.

The two areas that the policy differs do not impede the Police Department from focusing on protecting all people in the City of Mountain View, and it does not blur the lines between separation of responsibilities and interests between the State and Federal governments. The model policy goes beyond the “Freedom Cities” points with provisions for checks and balances when making notifications to ICE, as well as expands the arbitrary aspects of appearance and attributes that prevents unreasonable search and seizure. It allows cooperation with ICE when necessary to protect the community at-large, or provide services to victims of crime, but clearly defines that local peace officers only act on criminal matters or when there is a judicial warrant.

### **ALTERNATIVES**

1. Endorse the Freedom Cities Policy in its entirety and direct staff to incorporate it into Mountain View policies.
2. Provide other direction.

**PUBLIC NOTICING**

Agenda posting and a copy of the report sent to representatives of the ACLU.

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MB/MP/7/CAM  
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- Attachments:
1. Equitable Communities Resolution
  2. ACLU Freedom Cities Policy Points
  3. Updated Immigration Violation Enforcement Policy
  4. Comparison of Freedom Cities Initiative and Updated Policy