



**DATE:** June 6, 2017

**TO:** Mayor and City Council

**FROM:** City Manager

**SUBJECT** Adoption of a Resolution Declaring the City of Hayward a Sanctuary City and Review of Proposed Administrative Rule 1.10

### **RECOMMENDATION**

That the City Council considers a Sanctuary City Declaration via the adoption of a resolution and provides feedback on proposed Administrative Rule Number 1.10 regarding Immigration Status Non-Discrimination Policy.

### **SUMMARY**

The City of Hayward has a long history of taking action to protect civil rights and denounce any form of prejudice and discrimination. The recent federal administration executive order regarding immigration status caused the Council to have concerns about how the executive order may affect local Hayward residents. Consequently, the Council established a 20-member Community Taskforce (Community Taskforce) to update the 1992 Anti-Discrimination Action plan and to also evaluate how the Federal administration's position on immigration would affect cities with a Sanctuary City designation, particularly as it relates to immigration enforcement requirements at the local level and allocation of federal funding.

The establishment of the Community Taskforce has created a forum for public discourse to hear residents' concerns related to their civil rights and fears of deportation. These fears have created a reluctance to use existing services designed to help. The public discourse has also created an opportunity for the City to provide information about the Hayward Police Department (HPD) immigration policies and practices. Since the formation of the Community Taskforce, several community conversations have occurred. Last month, the Community Taskforce recommended Council consider becoming a Sanctuary City.

The agenda item tonight requests that the Council considers a sanctuary city declaration via the adoption of a resolution and provides guidance regarding a proposed administrative rule. HPD has an existing immigration policy #415 that applies to sworn personnel and is described in this report. The proposed administrative rule attached would be applicable to all other City employees and asserts that every Hayward resident, regardless of immigration status, has equal access to City services and equal service when conducting business with the City.

## **BACKGROUND**

### Local Hayward Efforts to Support Inclusivity and Related Demographics:

Hayward is currently among the most diverse cities in the United States. According to 2011-2015 US Census data, approximately 58% of Hayward households speak a language other than English at home and 39% of Hayward residents were born outside of the United States.

The Hayward community and our city government has a long history of acting to protect civil rights and standing up to prejudice and discrimination. In 1989, the City Council adopted a resolution opposing construction and maintenance of an Immigration and Naturalization Detention Center in Oakland. Also in 1989, the City Council adopted a resolution in support of state Assembly Bill 2208 prohibiting housing discrimination based on non-citizenship. In 1992, the City Council adopted the Anti-Discrimination Action Plan for the City of Hayward, which now is in the process of being reviewed and updated at the direction of the City Council. In 1994, the City Council adopted a resolution opposing state Proposition 187, which sought to restrict the constitutional rights and freedoms of immigrants. In 2010, the City Council adopted a resolution in support of the Federal Development, Relief and Education of Alien Minors (DREAM) Act. The City also worked cooperatively with community leaders to establish the Hayward Day Labor Center, which was opened to all regardless of immigration status, and where HPD worked closely with the Day Labor Center staff to support and protect those receiving services when they became victims of criminal activity.

The City of Hayward has also achieved great strides in embracing this diversity and respecting the civil and human rights of its residents regardless of their ethnic or national origin, gender, race, religious affiliation, sexual orientation, or immigration status. The City sponsors an array of projects and programs as a part of a long-term commitment to support its diverse residents, including: Increasingly robust multi-lingual outreach and messaging efforts; simultaneous translation services at public meetings and events; speaker series; and other annually-hosted events designed to highlight and honor the community's diversity. The City also actively partners with and contributes financially to 211 Alameda County, which connects residents with important local community services in a multitude of languages. The City also created a resources webpage for our undocumented residents and allies at [www.hayward-ca.gov/KnowYourRights](http://www.hayward-ca.gov/KnowYourRights).

### General Overview of "Sanctuary Cities"<sup>1</sup>

The term "sanctuary city" is not defined by Federal or State law but is often used to refer to municipalities that have policies in place that limit assistance for local enforcement of federal immigration laws, and expenditure of local resources on cooperation with U.S. Immigration and Customs Enforcement Agency (ICE) enforcement programs. Although such policies or

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<sup>1</sup> The City of San Leandro recently prepared a comprehensive staff report analyzing the federal and state law regarding immigration status, "sanctuary cities", and law enforcement policies. Much of their staff's analysis is included in the [City's Sanctuary City Consideration weblink](#) under "Federal and State Legal Analysis<sup>1</sup> and Responses from Various Entities"

ordinances take many forms, they generally include limitations on local law enforcement making arrests based on immigration violations, limitations on local law enforcement gathering information about immigration status, compliance with ICE detainer requests, and sharing certain information with ICE, including an individual's custody status or release date for local custody (Piers, Badlani, Lederer, *Legal Issues Regarding Local Policies Limiting Local Enforcement of Immigration Laws and Potential Federal Responses*, Memo to Tom Cochran, The U.S. Conference of Mayors, and Darrell W. Stephens, Major Cities Chiefs Association, January 13, 2017).

*Sanctuary City Declaration Proponents/Opponents Perspectives:*

Some supporters of such policies assert that cities have local obligations, and that diverting local resources to support the enforcement of federal programs designed to deter or discourage unauthorized immigration would undermine community relations, disrupt municipal services, interfere with local law enforcement, and violate humanitarian principles. Some opponents of such policies assert that local jurisdictions that refuse to support federal immigration policy are encouraging illegal immigration undermining federal enforcement efforts, or that cities are putting at risk access to federal funding or jeopardizing future competitive funding for important local programs and services that, in most cases, serve the very same population sanctuary cities are attempting to protect.

On May 22, 2017, Attorney General Jeff Sessions released a memo stating that the term "sanctuary jurisdiction" only refers to jurisdictions that willfully refuse to comply with 8 U.S.C. 1373, which prohibits local governments from restricting employee communication of immigration status information to ICE. Hayward, as with many jurisdictions, complies with Section 1373.

The City will be required to certify our compliance with Section 1373 online when applying for certain Department of Justice grants.

Current Law Enforcement Practices of the Alameda County Sheriff's Office:

The Alameda County Sheriff's Office has adopted General Order #1.24, which provides deputies with guidelines on their duties and responsibilities associated with immigration law, enforcement, arrests, detentions, detainers, and Requests for Notification. The policy requires the Sheriff's Office to equally enforce laws and serve the public without consideration of immigration status, and states that the Sheriff's Office does not accept and/or honor immigration detainers from ICE. The immigration status of a person, and the lack of immigration documentation, alone, has no bearing on the way the Sheriff's Office staff execute their duties. It is noted that there is a difference between an arrest warrant signed by a judge, which the Alameda County Sheriff's Office does honor, and an immigration detainer signed by an ICE agent. Finally, the Sheriff's Office policy provides that under no circumstances will a person be detained or arrested by Sheriff's Office personnel based solely on his or her immigration status, whether known or unknown.

### Current City of Hayward Police Department Practices:

The Hayward Police Department (HPD) equally enforces the law and serves the public without consideration of immigration status. The lack of immigration documentation, alone, has no bearing on the way police officers execute their duties. The Department also has practices and policies in place that prohibit police officers from detaining any individual, for any length of time, for a civil violation of federal immigration laws or a related civil warrant. HPD Policy #415 requires that individuals who are otherwise ready to be released are not detained solely for notification to immigration authorities. HPD officers do not participate in independent sweeps or other concentrated efforts to detain suspected undocumented workers, and shall only assist federal operations with traffic control or peace keeping efforts (HPD Policy #415.3.2 and 415.3.3). Consistent with adopted protocols and relevant laws and statutes, contacts with members of the public, detentions, and arrests must be based on reasonable suspicion or probable cause, and police officers do not initiate law enforcement action based solely on observations related to a subject's actual or perceived immigration status. Nevertheless, any individual who is arrested for committing a crime will continue to be charged and/or referred to the District Attorney's Office for prosecution irrespective of their immigration status. A copy of Hayward Police Department Policy #415 is included with this report as Attachment IV.

### Hayward Unified School District:

At its December 14, 2016 meeting, the Hayward Unified School District Board of Education adopted Resolution 1617-26, *Board of Education's Commitment to the Education of All Children and Making all Campuses a Safe Zone for Students and Families Threatened by Immigration Enforcement*. Hayward Unified School District declared its schools "safe zones," taking the position that all students have the right to attend school regardless of their immigration status or the immigration status of their family members.

### Hayward Community Task Force:

On January 17, 2017, City Council established a limited term 20-member Community Task Force, made up of a dedicated and invested group of community members who represent the diversity of Hayward. The Community Task Force was charged by City Council with updating the 1992 Anti-Discrimination Action Plan. Because of community interest in sanctuary city designations, at the April 14, 2017 meeting, the Community Task Force recommended that the City Council consider adoption of a resolution declaring the City of Hayward a sanctuary city.

## **DISCUSSION**

There is no single definition of what constitutes a sanctuary city. In general, a sanctuary city is a city that formally welcomes refugees and undocumented residents. Often this formal declaration includes a statement that employees and officers of the city or agency will limit cooperation with federal immigration enforcement activities as much as allowed by law.

Because the President of the United States has publicly stated that he intends to cancel federal funding to jurisdictions that support “sanctuary” policies, if the Council chooses to pass this resolution, a substantial amount of federal funding may be at risk. Loss of this funding could disrupt the viability of major local road, infrastructure, or flood protection projects designed to serve the public and protect public safety or eliminate sources such as Community Development Block Grants that the City uses to support local nonprofits and social service organizations. Nevertheless, it remains unclear whether the President has the authority to withhold all such funding unilaterally, or if some components of this action would be found unconstitutional and/or would require congressional authorization. The constitutionality of the Executive Order is already the subject of litigation, the outcome of which is not yet final.

The City Council should note that there are an array of local nonprofit and community service organizations based in Hayward that provide various safety net services to local Hayward residents, many of which rely on various levels of federal funding. It is currently unknown whether adopting the attached resolution would endanger such organizations’ access to existing or future federal funds.

#### Proposed Administrative Rule:

The purpose of the proposed Administrative Rule Number 1.10 - Immigration Status Non-Discrimination Policy (Attachment III), is to ensure that every Hayward resident, regardless of immigration status, has equal access to all City services and equal service when conducting business with the City and to reaffirm that all City of Hayward employees adhere to this commitment. Typically, Administrative Rules are approved by the City Manager and are not presented to the City Council for approval. Given the desire for more transparency around the City’s policies with respect to immigration, staff is sharing the proposed Administrative Rule with the Council for any feedback before it is approved and implemented by the City Manager.

#### **FISCAL IMPACT**

As detailed above, President Trump has stated his intent to limit the number of federal funds allocated to jurisdictions that support “sanctuary” policies. The President’s ability to do this is currently being challenged in court. If the President and Congress ultimately follow through on limiting funds, and if this act holds up in court, the state of California could potentially be at risk of losing federal funds if the State Legislature passes and the Governor signs SB 54. In that case, the actions of Hayward as an individual City become less significant. With each of these factors in play, the fiscal risk to the City is currently unknown.

The following tables provide a snapshot of the City’s federal funding exposure. The total amount of exposure is \$30,862,000. However, some of these funds may be more or less vulnerable than other funding. For example, pending and future applications for competitive grants would be most at risk because the federal departments that administer these programs have broad discretion to determine future awards, and the agency or department heads of these grantmaking agencies report directly to the President. As stated

previously, in some cases, a new certification requirement may impact eligibility moving forward.

**Block Grants:** The City receives the following federal block grant or pass through money annually based on a formula. There are legal arguments for why the federal government may not be able to deny individual jurisdictions this money. Unfortunately, some of this money is also at risk of being defunded through the federal budget process, which is a separate risk from the Sanctuary City discussion.

DEPARTMENT	GRANT AND PURPOSE	FY2017 AMOUNT
Library and Community Services	Community Development Block Grant for housing, property rehabilitation, & economic and community development	\$1,400,000
Police Department	Money for youth and family counseling, first time offender diversion, traffic enforcement, crime prevention, and truancy intervention	\$785,000
Fire Department	Citizens Emergency Response Teams (CERT) training programs	\$20,000
<b>TOTAL BLOCK GRANTS:</b>		<b>\$2,205,000</b>

**Money Awarded with Signed Agreements:** The City has been awarded and has signed agreements to receive the following federal money; however, the City has not yet received all or parts of this money. It is therefore possible that the federal government could withhold the remainder of what the City is owed, though the City could legally challenge such an act.

DEPARTMENT	GRANT AND PURPOSE	AMOUNT
Utilities and Environmental Services	EPA Grant to provide youth education about Stormwater programs and install trash capture devises	\$800,000
Utilities and Environmental Services	Car Sharing Grant to market car sharing programs in the downtown and one other location	\$200,000
Information Technology & Economic Development	Fiber Optic Network Installation Project	\$2,744,000
Fire Department	Defensible Space Program	\$116,000
<b>TOTAL:</b>		<b>\$3,860,000</b>

**Money Tentatively Awarded without Signed Agreements:** The City has been tentatively awarded the following federal money; however, the City does not yet have signed agreements to receive this money. Therefore, the federal government could decline to move forward with the formal agreements and the City could lose this money.

DEPARTMENT	GRANT AND PURPOSE	AMOUNT
Public Works: Airport	FAA money to complete necessary and required safety enhancements and infrastructure improvements	\$13,500,000
Public Works: Transportation	One Bay Area Grant (OBAG) in FY18 for pavement rehabilitation from Winton Avenue West – Hesperian to Santa Clara	\$1,750,000
<b>TOTAL:</b>		<b>\$15,250,000</b>

**Pending Applications:** The City has recently applied for the following federal money and applications remain pending. Staff feels this money, as well as money from future applications, is most at risk of being withheld if Council passes the attached resolution. However, the extent of that risk is currently unknown. In addition, because these grants are competitive, the City may not be awarded this money regardless of its sanctuary city status.

DEPARTMENT	GRANT AND PURPOSE	AMOUNT
City of behalf of the Hayward Area Shoreline Planning Agency	NOAA grant to prepare a Shoreline Master Study to assess and respond to risks associated with Climate Change	\$700,000
Police Department	BYREN Criminal Justice Innovation Program Implementation grant for attendance and truancy prevision projects	\$846,900
<b>TOTAL PENDING APPLICATIONS:</b>		<b>\$1,546,900</b>

**Future Applications:** The City plans to apply in the future for the following federal money as it becomes available.

DEPARTMENT	GRANT AND PURPOSE	AMOUNT
City Manager, Development Services, & Fire	FY17 FEMA funds to expand the City's soft story retrofit program	\$3,000,000
City and Partners	Promise Neighborhood expansion grant to continue to the work of the Hayward Promise Neighborhood to provide cradle-to-career education services	\$5,000,000
<b>TOTAL FUTURE APPLICATIONS:</b>		<b>\$8,000,000</b>

## **PUBLIC CONTACT**

In advance of this meeting, the City Council received correspondence from diverse local and regional constituents and stakeholders who expressed various opinions and concerns related to this topic. While not an exhaustive list, the following represents several common themes and elements that were expressed within that correspondence:

- Encouragement to declare Hayward a sanctuary city
- Requests to quantify potential exposure to loss of federal funding
- Requests for legal assistance to immigrants
- Requests to provide more transparency around HPD policies
- Requests to codify new protective local policies

## **NEXT STEPS**

### Proposed City Resolution:

Attached for the City Council's consideration is a draft sanctuary city resolution. The proposed resolution contains various provisions that:

- 1) Confirm that Hayward welcomes, honors, and respects contributions of all residents, regardless of their religious affiliation, race, national or ethnic origin, gender, sexual orientation, or immigration status;
- 2) Commit that the Hayward Police Department will continue to equally enforce the laws and serve the public without consideration of immigration status; and
- 3) Explain that fostering a relationship of trust, respect, and open communication between City officials and residents is essential to the City's mission. The resolution also confirms the City of Hayward's commitment to protect the rights guaranteed by the Federal and State Constitutions, including the freedom of religion, speech, assembly, privacy, as well as equal protection. The draft resolution concludes by explicitly declaring Hayward a sanctuary city.

### Proposed Administrative Rule:

The City Manager will approve the finalized Administrative Rule and ensure that all City employees review and implement the policy accordingly.

### Proposed Community Outreach:

Staff will be conducting the below outreach to Hayward community members between now and the end of 2017. In addition, the Community Taskforce is working on developing longer term outreach strategies as part of the update to the City's Anti-Discrimination Action Plan.



- Know Your Rights Workshops: Staff has arranged several Know Your Rights workshops in partnership with Centro Legal de la Raza.
- Webpage and Social Media: Staff has created a webpage at [www.hayward-ca.gov/KnowYourRights](http://www.hayward-ca.gov/KnowYourRights) to house information on City policies, resources, and recent news. The webpage includes a bilingual video of Chief Koller and Officer Mao explaining that the Police Department does not enforce immigration law. Staff has scheduled social media messaging over the next several months to drive traffic to this site.
- Partner Tool Kit: Staff has created a basic bilingual toolkit that any community partner or school can use to inform their members about this topic. The toolkit includes information on the rapid response hotline, legal assistance, and upcoming workshops. It is intended to be used with the video of the Chief Koller.

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