REQUEST FOR COUNCIL ACTION

CITY COUNCIL MEETING DATE: DECEMBER 20, 2016

TITLE: ORDINANCE RELATING TO THE CITY’S PROCEDURES CONCERNING IMMIGRATION STATUS AND THE ENFORCEMENT OF FEDERAL IMMIGRATION LAW FOLLOWING THE DECLARATION OF THE CITY OF SANTA ANA AS A SANCTUARY FOR ALL ITS RESIDENTS {STRATEGIC PLAN NO. 5, 6F}

CITY MANAGER

CLERK OF COUNCIL USE ONLY:

APPROVED
☐ As Recommended
☐ As Amended
☐ Ordinance on 1st Reading
☐ Ordinance on 2nd Reading
☐ Implementing Resolution
☐ Set Public Hearing For

CONTINUED TO

FILE NUMBER

RECOMMENDED ACTION

Adopt an ordinance relating to the City’s procedures concerning immigration status and the enforcement of federal immigration law following the declaration of the City of Santa Ana as a sanctuary for all its residents.

DISCUSSION

At the December 6, 2016 meeting, the City Council adopted Resolution No. 2016-086, declaring the City of Santa Ana a sanctuary for all its residents, regardless of their immigration status. Resolution No. 2016-086 outlined that the City would implement various policies called for by the resolution. These policies include the following: protecting sensitive information; reaffirming the City’s commitment to preventing biased-based policing and disallowing the use of City resources for immigration enforcement; exercising appropriate discretion in policing; providing additional training for all affected City employees, officials, and agents; and establishing a task force for oversight. Based on City Council discussion regarding Resolution No. 2016-086, staff has prepared an ordinance for City Council consideration (Exhibit 1). The purpose of this ordinance is to establish the City’s procedures concerning immigration status and enforcement of federal civil immigration laws.

In 1996, the U.S. Congress passed two laws that prohibit state or local governments from restricting communication with the federal government regarding the immigration status of any individual: section 434 of the Personal Responsibility and Work Opportunity Reconciliation Act of

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1996, 8 U.S.C. § 1644, and § 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), 8 U.S.C. § 1373. These laws were passed to authorize state and local law enforcement agencies to communicate with federal immigration authorities regarding the status and presence of unauthorized immigrants in their jurisdictions. While neither of these statutes mandates cooperation or sharing of information with federal immigration authorities, both do prohibit any restriction on information sharing between the federal government and state or local government entities or officials.

Recently, these provisions have been used to both challenge and support state and local efforts to engage in federal civil immigration law enforcement. Proponents of state and local involvement in federal civil immigration law enforcement have argued that these provisions are an expression of Congress’s intent to maximize cooperation among federal, state, and local law enforcement agencies in enforcing federal immigration laws. Conversely, proponents of less state and local involvement in federal civil immigration law enforcement, including the Obama administration, have argued that these provisions preempt certain state and local efforts to engage in immigration enforcement by drawing limits on the nature of non-federal engagement in immigration enforcement.

While many state and local jurisdictions throughout the United States have adopted polices or practices that limit their own jurisdictions’ federal civil immigration law enforcement efforts, the federal government has not made a formal legal determination as to whether those state and local laws or policies violate these provisions. And although there is no legal definition, these laws or policies are sometimes referred to as “sanctuary policies”, while the jurisdictions themselves are sometimes referred to as “sanctuary cities” or “sanctuary jurisdictions”.

Through various forms of official communications from U.S. President-elect Donald J. Trump, he has expressed his opposition to “sanctuary policies” and “sanctuary cities”. For example, in October 2016, President-elect Trump released his 100-day action plan to Make America Great Again, which states that he will “cancel all federal funding to Sanctuary Cities”. During his campaign, President-elect Trump’s rhetoric has incited fear among many individuals throughout the United States, particularly among individuals who identify as being part of a marginalized, minority, and/or unprivileged group. In response to President-Elect Trump’s plan, local officials in more than ten major cities, including San Francisco, Oakland, Los Angeles, New York, Chicago and Washington, D.C., reaffirmed their commitment to upholding their status as “sanctuary cities”, even in the face of uncertainty from the federal government.

Furthermore, many cities and towns throughout the United States have adopted or enacted resolutions, ordinances, policies, and practices to demonstrate their commitment to equal, respectful, and dignified treatment of all people, regardless of their immigration status, and as a result may be referred to as a "Sanctuary City", even though there is no legal definition for “Sanctuary City”. By adopting Resolution No. 2016-086, the City of Santa Ana similarly demonstrated its commitment to its residents by unequivocally stating that it will provide a sanctuary to all residents who are fearful by assuring them that the City will not expend any funds, nor use its resources, including staff, to administer federal immigration law which is the
exclusive authority of the federal government. This resolution is indicative of the City’s commitment to social justice.

If this ordinance is adopted, the City would be required to implement various policies required by the ordinance. These policies include protecting sensitive information, prohibiting use of City resources for immigration enforcement, preventing biased-based policing, and directing law enforcement personnel to exercise discretion to cite and release individuals in lieu of detaining them at a local detention facility or county jail based on the nature of the alleged crime. The ordinance would also require the City to provide additional training, as well as to establish a task force, or similar body composed of community members, to advise the City Council on these and all policies related to this ordinance.

**STRATEGIC PLAN ALIGNMENT**

Approval of this item supports the City’s efforts to meet Goal #5 - Community Health, Livability, Engagement & Sustainability, Objective 6 (focus projects and programs on improving the health and wellness of all residents.), Strategy F (incorporate health, wellness, and equity into all applicable policies and plans).

**FISCAL IMPACT**

There are no fiscal impacts associated with this item.

Exhibit: 1. Ordinance
ORDINANCE NO. NS-XXX

AN UNCODIFIED ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA ANA RELATING TO THE CITY'S PROCEDURES CONCERNING IMMIGRATION STATUS AND THE ENFORCEMENT OF FEDERAL IMMIGRATION LAW FOLLOWING THE DECLARATION OF THE CITY OF SANTA ANA AS A SANCTUARY FOR ALL ITS RESIDENTS

THE CITY COUNCIL OF THE CITY OF SANTA ANA DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council of the City of Santa Ana hereby finds, determines, and declares as follows:

A. The City of Santa Ana has long embraced and welcomed individuals of diverse racial, ethnic, religious, and national backgrounds, including a large immigrant population.

B. The City of Santa Ana welcomes, honors, and respects the contributions of all of its residents, regardless of their immigration status.

C. Immigrants and their families in Santa Ana contribute to the economic and social fabric of the City by establishing and patronizing businesses, participating in the arts and culture, and achieving significant educational accomplishments.

D. Fostering a relationship of trust, respect, and open communication between City officials and residents is essential to the City's mission of delivering efficient public services in partnership with our community, which ensures public safety, a prosperous economic environment, opportunities for our youth, and a high quality of life for residents.

E. The City of Santa Ana seeks to continue to foster trust between City officials and residents to protect limited local resources, to encourage cooperation between residents and City officials, including law enforcement officers and employees, and to ensure public safety and due process for all.

F. In recognition of the City's continued commitment to the equal, respectful, and dignified treatment of all people, the City Council, on December 6, 2016, adopted Resolution No. 2016-086 declaring the City of Santa Ana a sanctuary for all its residents, regardless of their immigration status. This Resolution called for certain actions by the City relative to the administration and enforcement of federal immigration law, which is the exclusive authority of the federal government.
G. The City now wishes to enact specific procedures consistent with Resolution No. 2016-089 and the City's commitment to social justice and inclusion.

SECTION 2. Purpose and Intent. The City of Santa Ana is one of the most ethnically, racially, and religiously diverse cities in the United States, with immigrants comprising approximately 46 percent of the City's population. The City has long derived its strength and prosperity from its diverse community, including those who identify as immigrants, and prides itself on their achievements. The cooperation of the City's immigrants is essential to advancing the City's mission, vision, and guiding principles, including community safety, support for youth and education, economic development, and financial stability. Through the City's commitment to social justice and inclusion, one of the City's most important objectives is to enhance its relationship with all its residents, including immigrants. Due to the City's limited resources, the complexity of federal civil immigration laws, the need to promote trust and cooperation from the public, including immigrants, and to attain the City's objectives, the City Council finds that there is a need to clarify the communication and enforcement relationship between the City and the federal government. The purpose of this ordinance is to establish the City's procedures concerning immigration status and enforcement of federal civil immigration laws.

SECTION 3. Requesting or Maintaining Information Prohibited. No City agency, department, officer, employee, or agent shall request or maintain information about, or otherwise investigate or assist in the investigation of, the citizenship or immigration status of any person unless such Inquiry is required by state or federal law or judicial decision.

SECTION 4. Disclosing Information Prohibited. Except as otherwise provided under applicable federal law, no City agency, department, officer, employee, or agent shall disclose information regarding the citizenship or immigration status of any person.

SECTION 5. Prohibitions Applicable to Sensitive Information. The prohibitions in Sections 3 and 4 of this ordinance shall also apply to any information that may be considered sensitive or personal by nature, including, but not limited to, the following: a person's status as a victim of domestic abuse or sexual assault; status as a witness to a crime; status as a recipient of public assistance; sexual orientation; or disability.

SECTION 6. Exceptions to Prohibitions. The prohibitions in Sections 3 and 4 of this ordinance shall not apply where the individual to whom such information pertains provides his or her consent (or if such individual is a minor, the consent of that person's parent or guardian), where the information is necessary to provide a City service, or where otherwise required by law.

SECTION 7. Use of City Resources Prohibited. No City agency, department, officer, employee, or agent shall use City funds, resources, facilities, property, equipment, or personnel to assist in the enforcement of federal civil immigration
law or to gather or disseminate information regarding the citizenship or immigration status of any person, unless such assistance is required by federal or state law or is contractually obligated. Nothing in this Section shall prevent the City, including any agency, department, officer, employee, or agent of the City, from lawfully discharging his or her duties in compliance with and in response to a lawfully issued judicial warrant or subpoena.

The prohibition set forth in this Section shall include but not be limited to:

(a) Identifying, investigating, arresting, detaining, or continuing to detain a person solely on the belief that the person is not present legally in the United States or that the person has committed a civil immigration violation;

(b) arresting, detaining, or continuing to detain a person based on any immigration detainer or federal administrative warrant, when such immigration detainer or administrative warrant is based solely on a violation of federal civil immigration law, or otherwise honoring any such detainer, warrant, or request to detain, interview, or transfer;

(c) notifying federal authorities about the release or pending release of any person for immigration purposes;

(d) providing federal authorities with non-public information about any person for immigration purposes; and

(e) enforcing any federal program requiring the registration of individuals on the basis of religious affiliation or ethnic or national origin.

(f) This Section shall not apply when an investigation conducted by any City agency, department, officer, employee, or agent indicates that the subject of the investigation:

1. has an outstanding criminal warrant;

2. has been convicted of a felony in any court of competent jurisdiction; or

3. is a defendant in any court of competent jurisdiction where a judgment has not been entered and a felony charge is pending.

SECTION 8. Implementation of Policies. Within a reasonable time following adoption of this ordinance, the City shall implement policies to prevent biased-based policing and direct its law enforcement personnel to exercise discretion to cite and release individuals in lieu of detaining them at a local detention facility or county jail based on the nature of the crime alleged to be committed. The City shall also provide appropriate training and establish a commission, task force, or similar body composed of
community members to advise the City Council on these and all policies related to this ordinance.

SECTION 9. Ordinance Not to Conflict with Federal Law. Nothing in this ordinance shall be construed or implemented to conflict with any valid and enforceable duty and obligation imposed by a court order or any federal or applicable law.

SECTION 10. No Private Right of Action. This ordinance does not create or form the basis of liability on the part of the City, its agencies, departments, officers, employees, or agents. It is not intended to create any new rights for breach of which the City is liable for money or any other damages to any person who claims that such breach proximately caused injury. The exclusive remedy for violation of this ordinance shall be through the City's disciplinary procedures for employees under applicable City regulations, unless the agency, department, officer, employee, or agent of the City is lawfully discharging his or her duties as set forth in Section 7.

SECTION 11. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Santa Ana hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions were to be declared invalid or unconstitutional.

SECTION 12. Effective Date. This ordinance shall become effective thirty (30) days after its adoption.

SECTION 13. Certification by Clerk. The Clerk of the Council shall certify the adoption of this ordinance and shall cause the same to be published as required by law.

ADOPTED this ______ day of ______________, 2017.

________________________
Miguel A. Pulido
Mayor

APPROVED AS TO FORM:
Sonia R. Carvalho, City Attorney

By: ______________________
John M. Funk
Assistant City Attorney

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AYES: Councilmembers ____________________________

NOES: Councilmembers ____________________________

ABSTAIN: Councilmembers ____________________________

NOT PRESENT: Councilmembers ____________________________

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, María D. Huizar, Clerk of the Council, do hereby attest to and certify that the attached Ordinance No. NS-XXX to be the original ordinance adopted by the City Council of the City of Santa Ana on _______________, and that said ordinance was published in accordance with the Charter of the City of Santa Ana.

Date: ____________________________

Clerk of the Council
City of Santa Ana