File#: 17-0116**, Item#: 7.**

REPORT REGARDING CURRENT CITY POLICIES ON IMMIGRATION ENFORCEMENT, THE STATE OF THE LAW SURROUNDING SANCTUARY CITIES, CITY COUNCIL OPTIONS IN THESE AREAS AND RELATED MATTERS

RECOMMENDED ACTION

Review staff's report, take public testimony, and provide direction to staff on what, if any, additional action is desired.

SUMMARY

In recent months federal authorities have proposed, and taken, various actions to more strictly and actively enforce federal immigration laws. In response, out of an expressed concern for how such actions would adversely affect their local populations, some states and cities have taken actions to oppose and/or blunt these efforts. Such state and local actions have taken various forms, ranging from symbolic declarations of "sanctuary" to actual policy changes limiting or prohibiting cooperation with federal immigration authorities. In a counter-response, a number of federal officials have proposed measures that would disqualify "sanctuary" jurisdictions from receiving various types of federal funding.

Here locally, community activists and residents, including City Councilmembers, have also expressed concerns regarding stepped up federal immigration enforcement. Questions have been posed about the impacts of pending legislation, the City's own policies on enforcement, what it means to be a "sanctuary city," or a "welcoming city," and what authority and options the City may have in the area of immigration enforcement.

Following public testimony at the January 10th City Council Meeting, the Mayor and Council referred this matter to staff for an analysis and a report. This item presents that report. The full report is presented in the "DISCUSSION" section, below. An executive summary of current City policies on immigration status and enforcement is presented here for your convenience:

Current City Policies Regarding Immigration Status and Enforcement

As a matter of policy and/or practice, City staff does not inquire about immigration status in its interactions with Chula Vista residents or the public or in its provision of City services. This includes interactions between residents and the Chula Vista Police Department (CVPD). For example, the CVPD does not inquire regarding the immigration status of anyone calling for police assistance, anyone acting as a witness to a crime, or anyone who is arrested. The CVPD also does not engage in any form of enforcement of federal immigration laws. These policies are set forth in the CVPD Policy Manual and are an integral part of CVPD's community policing philosophy. Because CVPD transfers arrestees into County operated jails, the County Sherriff-not CVPD-administers terms of their detainment and responds to requests for detainer from federal authorities. The CVPD **does** currently cooperate with federal authorities regarding enforcement of federal criminal laws that are

unrelated to immigration. CVPD views this cooperative relationship as an integral part of its ability to address crime and disorder within the community.

ENVIRONMENTAL REVIEW

Environmental Notice
The activity is not a "Project" as defined under Section 15378 of the California Environmental Quality Act State Guidelines; therefore, pursuant to State Guidelines Section 15060(c)(3) no environmental review is required.

Environmental Determination
The activity is not a "Project" as defined under Section 15378 of the California Environmental Quality Act State Guidelines; therefore, pursuant to State Guidelines Section 15060(c)(3) no environmental review is required.

BOARD/COMMISSION RECOMMENDATION
Not applicable

DISCUSSION

A. Background

Proposed changes in immigration policy and stepped up enforcement of existing immigration laws under President Trump have resulted in many undocumented individuals fearing arrest and deportation. In an attempt to allay these fears, a number of state and local governments have opposed these efforts and/or adopted what are commonly known as "sanctuary" policies. Representatives from ACCE, the Alliance of Californians for Community Empowerment Action, have addressed the City Council asking the Council to consider declaring Chula Vista a "sanctuary city." Representatives of the American Civil Liberties Union (ACLU) have also met with Council Members and City staff individually to voice concerns and learn about the City's policies. In response, the City Council has asked staff for more information, and an analysis of City Council options.

One of the interesting-and challenging-aspects of this discussion is that there is no universal understanding of what it means to be a "sanctuary" jurisdiction.

Among policy makers and commentators, the "sanctuary" designation appears to be most commonly associated with a state, county or city that chooses, in varying degrees, not to cooperate with federal efforts to enforce federal immigration laws. Typical forms of non-cooperation include: prohibiting local law enforcement officers' involvement in enforcing immigration laws; refusing federal requests to further detain an inmate believed to be in violation of federal immigration laws; or declining to notify federal authorities of such an inmate's impending release from custody. Such state and local actions are frequently, but not always, accompanied by some form of declaration of "sanctuary" status.

Many in the public appear to define the term "sanctuary" more literally, to mean a place where non-legal immigrants are actually protected from detection or arrest by the local government, or where they are immune from federal prosecution.[2] Others view the designation more generally, or

symbolically, as meaning a place where they are “safe”.

Legal definitions for “sanctuary” jurisdictions are starting to be developed, but most of these are still not clear-or consistent. Executive Order 13768 of January 25, 2017, for example, defines “sanctuary jurisdictions” as those that “willfully refuse to comply with 8 U.S.C. 1373.” (This is the law that, among other things, prohibits local jurisdictions from enacting policies that prohibit their sharing of immigration information with federal authorities.) Under this Order, “sanctuary jurisdictions” so-defined would no longer be qualified to receive federal funding. Future legislation and administrative guidelines are expected to refine or expand this definition.[3]

B. Current City/County Policies

In deciding what if anything the City should do more in this area, it is crucial to understand the City’s existing policies. These, along with the County Sheriff’s current policies on how to respond to federal “detainer” requests at County-run jails, are presented below.

1. General Requests for City Services

As a matter of law, policy and/or practice, City staff does not inquire about immigration status in its interactions with the public, or in its provision of City services. Examples include: A person obtaining a business license, a building permit, a dog license, a security alarm permit or a library card; A person reserving a gazebo in a City park, signing up to participate in City sponsored events (e.g., the City’s Community Fun Run), or enrolling in a recreation class; A person requesting a public record or asking a question of City staff regarding interpretation of the City Municipal Code; A person paying a sewer bill, a parking ticket or an overdue library book fine; A person reporting a pothole, a damaged sidewalk or tree, a fire, graffiti in a park, a loose dog, an abandoned house or vehicle, or a possible Code violation; And a person calling for emergency ambulance or fire assistance.

2. Routine Interactions with CVPD

Like most law enforcement agencies that embrace community policing, the CVPD focuses on crime and disorder in Chula Vista neighborhoods, not immigration status. Immigration status is not a factor in the receipt or provision of public safety services by the CVPD. Accordingly, no person interacting with any member of the CVPD-as a crime victim or a witness-is asked about immigration status. CVPD officers and civilian staff interact with city residents and visitors daily in a variety of contexts related to providing public safety services: responding to security alarm activations, following up with domestic violence victims, reaching out to homeless individuals to connect them with services, and providing copies of public records at the front counter. Immigration status is not a consideration in any routine or proactive interaction with members of the public. Immigration status is also not an issue, or area of inquiry, in connection with resident participation in Neighborhood Watch programs, citizens’ academy, Coffee With-A-Cop, National Night Out, or other CVPD-sponsored events or activities.

Formal CVPD policy in this area is set out in the Chula Vista Police Department Policy Manual, Policy 428. This policy states in part: “The Chula Vista Police Department recognizes and values the diversity of the community it serves. It is incumbent upon all employees of this

Department to make a personal commitment to equal enforcement of the law and equal service to the public regardless of immigration status. Confidence in this commitment will increase the effectiveness of the Department in protecting and serving the entire community…. All individuals, regardless of their immigration status, must feel secure that contacting law enforcement will not make them vulnerable to deportation." Policy 428 is also reflective of the Department's Mission Statement to treat "all persons with fairness, respect and dignity." If a CVPD officer were found to violate these policies, after an appropriate investigation and due process, such conduct could lead to disciplinary action or dismissal.

3. Criminal Investigation and Arrest

In the criminal investigation and arrest arena, CVPD officer contacts with individuals must be based on reasonable suspicion of criminal activity. Officers may arrest individuals only if they have probable cause to believe the individual has committed a crime. CVPD officer contacts and arrests may **not** be based on race, ethnicity, gender, sexual orientation, religion, socioeconomic or **immigration status**. These are requirements of both the U.S. Constitution and CVPD Policy 428. Further, per CVPD policy, no inquiries are made regarding any suspect's immigration status either pre or post arrest.

4. CVPD does not enforce federal immigration laws

CVPD officers do not enforce federal immigration laws. Nor do they participate in operations with any federal law enforcement agency to enforce immigration laws. If members of the public call the CVPD to report suspected immigration violations they are referred to U.S. Immigration and Customs Enforcement (ICE). ICE is the largest investigative agency in the Department of Homeland Security (DHS). ICE is responsible for enforcing federal immigration laws as part of its homeland security mission.

Under federal law, there is a voluntary program under in which local police officers can be trained and cross-deputized to act as immigration agents to enforce federal immigration law. The program is commonly known as the "287(g) Program." The CVPD does not participate in, and has no plans to start participating in this program. Instead CVPD focuses its limited resources on crime for the public safety of the entire community. Police Chief Roxana Kennedy has repeatedly stated in public meetings, press interviews and interactions with members of the community that CVPD's focus is on the public safety for all city residents and visitors, and not on duplicating the work of federal immigration officials. As of the date of this report CVPD is not aware of any other law enforcement agency in San Diego County participating in the 287(g) Program.

5. Areas where CVPD Does Cooperate with Federal Authorities

Like most police agencies, the CVPD **does** participate in task forces that include federal law enforcement agencies. But these task forces focus on crime, such as drug trafficking, terrorism, human trafficking, organized crime, fugitive apprehension and weapons and currency violations, not civil immigration law.

Under CVPD Policy 428, and in practice, CVPD might also respond to requests to provide support from federal law enforcement activities. For example, if a federal law enforcement

agency (including ICE) was conducting a raid of a house suspected of illegal activity, CVPD would typically be notified and asked to provide traffic control or peacekeeping services in the immediate area. In exigent circumstances, assistance for law enforcement officer safety could also be provided. If CVPD resources were available, CVPD would typically respond to this request.

6. The City Jail

CVPD uses its jail to "book" and briefly detain individuals arrested by CVPD officers. "Booking" involves documenting identifying information, photographing and fingerprinting an arrested party. Fingerprints and photos of all arrestees are shared automatically with other local, state, and federal agencies through a shared data base. CVPD averages six adult bookings into the City jail per day.

After booking, male arrestees are taken to the San Diego County Central Jail in downtown San Diego. Female arrestees are taken to Las Colinas Detention and Reentry Facility in Santee.

CVPD jail staff does not itself inquire regarding an arrestee's immigration status, but may become aware of detainers, warrants, or other notifications by ICE that have been entered by ICE into law enforcement databases. Per the City's jails procedures manual, if this occurs, ICE would be notified. If ICE provides an ICE Detention order, that order is transported with the arrestee to the County Jail.

Jail staff:

- Does not specifically inquire about the immigration status of any arrestee.
- Does not proactively contact ICE to detain arrestees or for identification purposes.
- Does not release local arrestees to ICE or Customs and Border Protection, via detainer or any other method. They do, however, release U.S. Marshals' inmates to ICE when so directed by the Marshals Office via ICE Detainer.
- Does not give consideration to immigration status when determining arrestees to be transported to San Diego County Jail. Arrestees are transferred to County Jail according to CVPD policy and the Jail's acceptance criteria, regardless of immigration status.

Since 2009 the primary use of the City jail has been through a City contract with the U.S. Marshals Service to house individuals charged with federal felony crimes. Under this contract, the jail currently houses only female inmates, averaging 30 daily in 2016. These individuals have been arrested by federal law enforcement officers and are either in criminal pre-trial or trial proceedings in federal court, or they have been convicted and sentenced in federal court and are awaiting assignment to a federal prison. The jail is not used as a detention center for individuals suspected of alleged civil immigration offenses.

7. County Jail Policies

Arrestees from every jurisdiction in San Diego County, including Chula Vista, are taken to one of the San Diego County Sheriff's Department's intake jails in downtown San Diego, Santee or

Vista. The City has no legal control or authority over policies within the County jail system. Immigrant arrestees are subject to evaluation by ICE agents who work at these jails for possible immigration consequences following release from Sheriff's custody. Specifically, ICE agents review criminal history, which is tied to fingerprints and identifying information routinely obtained in the booking process. If subject to immigration consequences, including removal proceedings, these inmates are subject to transfer directly from Sheriff's custody to ICE custody before leaving a County jail. ICE custody could result in transfer to an immigration detention facility or immediate removal from the United States. Sheriff William D. Gore, in a media interview, has stated he believes it is safer for all concerned for ICE agents to take custody of eligible inmates in a secure jail setting rather than have agents seek out individuals after release from jail in public or at private work places and residences, where agents also may encounter additional undocumented individuals.

C. Federal Law

1. Current Federal Law/Orders

a. Federal Authority Over Immigration Enforcement Well Established

The U.S. Federal Government has exclusive jurisdiction over immigration laws and their enforcement within the United States. Congress enacts immigration laws; numerous federal agencies administer and enforce them; and federal courts decide immigration disputes and construe immigration law. Key immigration enforcement agencies are Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP). Both are in the Department of Homeland Security (DHS). Key laws include the Immigration and Nationality Act of 1952, the Immigration Reform and Control Act of 1986, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

Historically, states' attempts to regulate immigration, such as taxing individuals upon crossing the border or limiting the number of individuals from certain nations, have failed either because they violate constitutional principles of federal supremacy over immigration, or specific federal laws. More recent state attempts to regulate immigration, by limiting immigrant access to certain public assistance, requiring law enforcement to check immigration status, or requiring the use of E-Verify to prevent employment of unauthorized workers, have been heavily litigated with mixed outcomes.

Immigration law has interrelated civil and criminal law aspects. Federal civil laws establish how a citizen of another country legally may enter or remain in the United States on a temporary basis as a student, visitor, or worker. Federal civil laws also establish paths to legal permanent residency or citizenship. Criminal violations, however, may have immigration consequences, affecting an individual's ability to legally enter or remain in the United States. For instance, a person convicted of a crime of moral turpitude, a drug crime, or a serious felony crime may be denied admission to the United States or may be removed from the United States. Depending on the individual's legal status and criminal history, removal may be administrative, by immigration officials, or judicial, by order of an immigration judge.

Additionally, violations of some immigration laws are felony federal crimes, such

as re-entry into the United States without permission after removal, “smuggling” a citizen of another country into the United States without inspection by an immigration official, or immigration document fraud.

b. Local Jurisdictions Prohibited from Withholding Immigration Information

Title 8, Section 1373 of the United Stated Code is part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. It prohibits state and local governments from having a policy or practice that forbids maintaining or giving to federal authorities information on the immigration status of individuals. Similarly Title 8, Section 1644 of the United States Code states that no state or local government may be prohibited from receiving immigration status information from federal entities. Notably, these laws do not currently mandate cooperation or sharing of information with federal immigration authorities**.** CVPD policies and practices are currently in compliance with these laws.

c. Executive Orders

On January 25, 2017, President Trump issued Executive Order 13768. Section 2(c), states: “It is the policy of the executive branch to … [e]nsure that jurisdictions that fail to comply with applicable Federal law do not receive Federal funds, except where mandated by law.”

Section 9, Sanctuary Jurisdictions, continues: “It is the policy of the executive branch to ensure, to the fullest extent of the law, that a State or a political subdivision of a State, shall comply with 8 U.S.C. 1373. Subsection (a) continues: “In furtherance of this policy, the Attorney General and the Secretary (of Homeland Security) in their discretion and to extent consistent with law, shall ensure that jurisdictions that willfully refuse to comply with 8 U.S.C. 1373 (sanctuary jurisdictions) are not eligible to receive Federal grants, except as deemed necessary for law enforcement purposes by the Attorney General or the Secretary. The Secretary has authority to designate, in his discretion and to the extent consistent with law, a jurisdiction as a sanctuary jurisdiction. The Attorney General shall take appropriate enforcement action against any entity that violates 8 U.S.C. 1373, or which has in effect a statute, policy or practice that prevents or hinders the enforcement of federal law.”

Additionally, Subsection (b) tasks the Secretary of Homeland Security with publishing a weekly report to publicize criminal actions committed by those with unlawful immigration status and jurisdictions that ignored or otherwise failed to honor detainer requests for same.

Subsection (c) tasks the Director of the Office of Management and Budget to obtain and provide information on all Federal grant money currently received by sanctuary jurisdictions. Executive Order 13768 specifically excludes grants “deemed necessary for law enforcement purposes” by the Attorney General or Secretary of Homeland Security from the types of grants sanctuary jurisdictions are ineligible to receive. President Trump, through his Attorney General Jeff Sessions or Homeland Security Secretary John Kelly, has not issued guidance in this area.

Another relevant example of the exercise of executive authority in this area was

initiated by President Barack Obama, through his Attorney General Loretta Lynch. In 2016, then President Obama used his executive power to require compliance with all applicable federal laws, including 8 U.S.C. 1373, for all recipients of criminal justice grants administered by the U.S. Department of Justice. Entities that do not comply with the Order would be ineligible to receive JAG (Edward Byrne Justice Assistance Grant Program) grants or SCAAP (State Criminal Alien Assistance Program) grants in FY 17-18. Other consequences could include withholding funding for grants already awarded, ineligibility for future grants and administrative, civil or criminal penalties. (U.S. Department of Justice, Office of Justice Programs (OJP) Guidance Regarding Compliance with 8 U.S.C. §1373, July 7, 2016.)

On March 27, 2017, Attorney General Jeff Sessions cited this Guidance in issuing a substantively similar policy. He stated the U.S. Department of Justice will require jurisdictions applying for Department grants to certify compliance with 8 U.S.C. 1373 as a condition for receiving these grants.

d. Defunding Sanctuary Jurisdictions

Executive Order 13768 has sparked speculation on whether the Federal Government has the legal authority to defund sanctuary jurisdictions, how and when it would do so, and what funding is at risk. Until implementing laws are enacted or litigation is concluded, it is not possible to provide reliable answers to these questions.

What we do know is that as of March 30, 2017, the Federal Government has not acted to defund any deemed "sanctuary" jurisdictions. We also know that the State of California, the City and County of San Francisco and Santa Clara County have each challenged Executive Order 13768 in federal court in a "pre-emptive strike." San Francisco seeks a ruling that, notwithstanding what are considered to be its "sanctuary city" policies, it in fact complies with 8 U.S.C. 1373. San Francisco further seeks a finding that this law and the executive order are unconstitutional. Santa Clara filed a similar suit along with an injunction against future enforcement of the executive order to protect federal funding for its hospital and public health department.

The argument that the Federal Government may not defund sanctuary jurisdictions relies on the Supreme Court's "anti-commandeering" decisions under the 10th Amendment of the United States Constitution. Under this doctrine, Congress may not require states to address particular problems or conscript state or local officials to assist in the enforcement of federal programs. (*Printz v. United States*, a 1997 decision holding that Congress could not require local law enforcement to do background checks on gun buyers until a federal background process was in place.) The counter argument is that there are other Supreme Court decisions finding the "anti-commandeering" doctrine does not apply to federal requests for information. Under this argument, Congress may require local police to comply with requests from federal agents to be notified (to provide information) when they have arrested an undocumented immigrant.

Another argument that the Federal Government may not defund sanctuary jurisdictions relies on "anti-coercion" decisions by the Supreme Court. (See, for example, *National Federation of Independent Businesses (NFIB) v. Sebelius*, a 2012 decision on the Affordable Care Act, holding that Congress could not withhold all Medicaid funding if a state refused to expand its Medicaid program.) Under the NFIB decision, it was ruled lawful for Congress to cut off existing

funding to states under certain circumstances, such as providing advance notice of conditions tied to funding so states can decide whether to accept the conditions to obtain funding. Furthermore, conditions imposed must relate to the Federal Government's objectives in the program. A federal defunding threat may invalidated as "coercive" if the amount the state stands to lose if it does not accept the conditions is substantial enough (e.g., the dollar amount at stake for noncompliance is at least 20% of the entity's budget).

2. Proposed Federal Legislation

Specifics on defunding sanctuary jurisdictions could be provided in legislation. In the current legislative session, the 115th Congress, federal legislators have introduced three bills protecting funding for sanctuary cities (S.415, H.R. 1076, and H.R. 748) and four bills stripping sanctuary cities of funding in transportation, infrastructure and other non-law enforcement areas (H.R. 824, H.R. 83, H.R. 400, and S. 87.) As of March 30, 2017, these federal bills have been referred to House and Senate committees, the next step in bill review after introduction.

D. California Law

1. Current California Laws

Law enforcement officers are subject to the following California laws related to reporting immigration status information and cooperating with detainers, which are federal requests to hold and turn over inmates to immigration authorities:

a. Local Laws not Allowed that Prohibit Certain Disclosures to INS Regarding Felony Arrestees in order to maintain Eligibility for Federal law Enforcement Grants

California Government Code Section 53069.75, enacted in 1993, provides that no local law shall prohibit a peace officer or custodial officer from identifying and reporting to the United States Immigration and Naturalization Service any person, pursuant to federal law or regulation, to whom both of the following apply: (a) the person was arrested and booked, based on the arresting officer's probable cause to believe that the person arrested had committed a felony; and (b) after the arrest and booking in subdivision (a), the officer reasonably suspects that the person arrested has violated the civil provisions of federal immigration laws. The purpose of this law is to assure that the state remains in compliance with federal requirements for grant funding under the Omnibus Control and Safe Streets Act which are mandated by Section 3753 of Title 42 of the United States Code.

b. Mandatory Notifications Involving Certain Drug crimes

An arresting agency must notify federal immigration officials when there is reason to believe the agency has arrested a non-U.S. citizen for certain drug crimes. *Cal. Health & Safety Code Section 11369*, enacted 1991. This state law mandate is incorporated into CVPD Policy 428 and followed by CVPD as a matter of policy. **Note**: Proposed SB 54 (described below), would repeal this provision.

c. Special Rules Regarding "Detainer" Requests

A "detainer" request is a request from an authorized immigration officer to keep an arrested individual in custody for up to an additional 48 hours where the immigration officer has reason to believe/indicated that the arrestee has violated a provision of immigration law. 8 C.F.R. 287.7. Under current federal law, detainers are "requests" only. In other words, federal law does not **mandate** that local law enforcement grant such requests.

California Government Code Section 7282.5, commonly known as "The Trust Act," was enacted in 2014. The Trust Act provides that after an individual arrestee otherwise becomes eligible for release from custody, a local law enforcement official has discretion to further "detain" that individual on an immigration hold, ***only if*** continued detention would not violate any law, and ***only if*** the individual has been convicted of serious felony crimes (such as assault, weapons, sexual abuse of a child, drug sales, rape, murder).

California Government Code Section 7283, commonly known as "The Truth Act," was enacted on January 1, 2017. The Truth Act provides that a local law enforcement entity that honors a detainer by immigration officials must (1) give the detained individual a consent form (stating reason for detainer interview, that the interview is voluntary, and that the individual may choose to be interviewed with his/her attorney present); (2) provide the individual with a copy of the detainer form; (3) notify the individual whether the local entity intends to comply with the detainer; (4) make these documents public records subject to disclosure; and (5) hold annual community meetings to provide information on immigration detainers.

Note: How local law enforcement respond to "detainer" requests it at the center of many "sanctuary" debates. These provisions are most relevant to the County Sheriff's office as they are the local law enforcement agency responsible for responding to immigration agency "detainers."

2. Proposed California Laws: SB 54

As of March 2, 2017, there were 25 immigration-related bills pending in the California assembly. Of most interest to the sanctuary jurisdiction discussion is SB 54, introduced by Senate President Kevin de León.

SB 54, known as the "California Values Act", would repeal California Health and Safety Code Section 11369 and prohibit law enforcement officers from using agency resources or personnel for immigration enforcement purposes. The repeal of Code Section 11369 would eliminate the requirement for a local law enforcement agency to notify federal authorities if it had reason to believe the agency had arrested a non-U.S. citizen for certain drug crimes. Law enforcement activities prohibited by SB 54 would also include:

- asking for an individual's immigration status,
- detaining an individual on the basis of a hold request,
- responding to requests for notification or other information unless that information is available to the public,

- providing personal information about an individual unless that information is available to the public,
- making arrests based on civil immigration warrants, allowing federal immigration authorities to interview individuals in state or local custody for immigration purposes unless pursuant to a judicial warrant,
- performing the functions of an immigration officer,
- making an agency's own database available to anyone for federal immigration enforcement, and
- using federal immigration officers as interpreters.

Law enforcement agencies may participate in joint law enforcement task forces as long as the primary purpose is not immigration enforcement, share criminal history in response to requests from federal immigration officials, and detain or transfer an individual for immigration enforcement with a judicial warrant.

SB 54 was amended on March 29, 2017 and was scheduled for a second reading in the Senate on March 30, when this staff report was finalized.

Note: This bill primarily affects county law enforcement agencies that operate jails and state agencies that operate prisons, because these entities regularly handle detainer requests. If enacted, this bill would require all law enforcement entities to carefully review their policies and practices for compliance, particularly regarding complying with ICE requests for notification of arrests. Chartered cities may have an argument against the law, if enacted and if challenged, that it improperly directs a municipal affair such as deployment of a city's police department in the provision of the city's public safety services.

E. Recent Actions Taken by Other Jurisdictions

1. "Sanctuary City" Declarations and Policies

A number of state and local jurisdictions have adopted policies that limit their own jurisdiction's involvement in federal immigration enforcement efforts. These policies vary widely, but are frequently lumped together as "sanctuary policies." Jurisdictions that adopt such policies frequently become known as "sanctuary" jurisdictions. This is true even if they themselves do not formally adopt the "sanctuary" designation**.** Los Angeles Mayor Eric Garcetti, for example, does not use the term "sanctuary city" to describe Los Angeles, because he said the term in unclear.

Nationwide, an estimated 300 to 350 state and local government entities in the United States have self-identified or have been identified by their laws and policies as "sanctuary" jurisdictions. Other estimates place the number of sanctuary jurisdictions closer to 600.

In California, jurisdictions identified as "sanctuaries" include the State of California (reportedly because of the 2014 Trust Act, which limits compliance with federal detainers to specified crimes), 18 California counties, and more than 30 California cities. Cities identified as "sanctuary cities" include Los Angeles, Maywood, San Leandro, Santa Clara, Santa Cruz, Oakland, San Francisco, San Jose, Malibu and Santa Ana.

As of March 30, 2017, staff does not have information indicating that any of the 18 cities in San Diego County has formally declared itself a "sanctuary city."

Typical policies adopted by "sanctuary cities" fall into one of five categories: (1) the provision of police services without inquiries or regard to immigration status; (2) prohibitions on local immigration enforcement; (3) limits or prohibitions on relationships with federal immigration authorities; (4) limits or refusals to respond to federal immigration detainer or notification requests/obligations; (5) social service, economic and/or legal support/programs for non-legal immigrants.

It should be noted that many of these policies are mere affirmations of existing policies considered to be consistent with community policing "best practices." Most of these policies do not violate existing federal laws.

2. "Welcoming City" Resolutions

"Welcoming City" resolutions typically do not address illegal immigration or enforcement. Instead, they express a willingness to welcome, and integrate immigrants and refugees into a community.

Many "welcoming" cities and counties are members of the national "Welcoming America" network. "Welcoming America" is a non-profit "guided by the principles of inclusion and creating communities that prosper because everyone feels welcome, including immigrants and refugees." Network members include government organizations and non-profits. Prominent national "welcoming" cities in this network include Denver CO, Houston TX, Baltimore MD, Austin TX, Tucson AZ, Richmond VA and Hartford CT.

In 2016, Encinitas, Lemon Grove and Solana Beach passed resolutions characterizing themselves as "welcoming cities." These 2016 resolutions do not address illegal immigration or law enforcement involvement in immigration laws or cooperation with immigration officials. Encinitas, for example, adopted its resolution to affirm participation in the "Building Welcoming Communities Campaign," part of the White House "Task Force on New Americans" to partner with immigrant immigration efforts. Similarly, Lemon Grove's resolution supported the White House Task Force on New Americans Welcoming Communities Campaign.

Last year, Imperial Beach's Mayor issued a welcoming city proclamation, but this was later retracted in response to arguments that it lacked community and City Council review. Recently, National City's "welcoming city" resolution was voted down by a 3-2 vote of the City Council. Opponents argued the city could lose federal funding; others stated the city already supported all residents and visitors, so a resolution was not necessary. Proponents stated only sanctuary jurisdictions, not those that had adopted a "welcoming city" designation, were at risk for loss of federal funding. Proponents also stated that a welcoming city designation would be responsive to voiced concerns.

3. Dis-association with Federal authorities

San Francisco has suspended collaboration with the Federal Bureau of Investigations on the Joint Terrorism Task Force, a counter terrorism program. San Francisco Police Chief Bill Scott ended the relationship in February in response to community concern over possible increased surveillance of Muslim communities under the Trump administration. Police officials said they would consider renewing a relationship with the FBI after obtaining guidance from its Police Commission.

The Santa Ana city council directed staff to reduce detainee capacity and wind down its contract with ICE by 2020 under a lease with ICE for use of the facility as an immigration detention center. In response, in February of 2017, ICE exercised a 90 day early termination provision in the lease. The lease had generated $340,000 per year in revenue; this revenue was used to pay down a portion of Santa Ana's remaining debt that it had incurred to build the jail it opened in 1997 (estimated at $24,000,000).

4. Funding for immigration attorneys

Los Angeles established a $10 million fund to provide legal assistance to immigrants facing removal. L.A. city and county governments were expected to contribute half, with philanthropic groups contributing the rest.

The Santa Ana city council has directed its staff to develop a plan to pay for attorneys to represent undocumented residents facing removal.

5. Actions Rejecting Sanctuary City Proposals.

Miami-Dade County commissioners recently voted to uphold the Miami-Dade County mayor's decision to rescind sanctuary policies and to instead cooperate with federal enforcement of immigration laws, to avoid potential loss of federal funding. The Salinas city council also recently voted against adopting a sanctuary city designation.

F. Other Stakeholder Actions:

1. Advice from consular offices

Consulates in some California cities have issued advisories to citizens of their respective countries to remain in contact with consular offices, to know their rights, to develop a family plan, such as assembling birth certificates and registering U.S. born children of foreign nationals in the parents' country of origin.

2. Immigration forums

Chambers of commerce, Spanish language media, and immigration attorneys have held free public forums to offer immigration advice and assistance in some California cities.

3. Free Internet information

The American Civil Liberties Union of San Diego & Imperial Counties has posted free publications on its website: "Deportation Preparedness Kit" and "Know Your Rights with Border

Patrol." The San Diego County Bar Association has posted immigration referral information, links and resources on its website.

4. Consumer protection

The American Bar Association's Commission on Immigration has launched a "Fight Notario Fraud" initiative to rein in immigration consultants engaging in the unlicensed practice of law, to the detriment of immigrants seeking legal status.

G. City Council Options

In responding to community concerns regarding federal immigration enforcement activities within the City, the City Council may consider one or more of the following courses of action. General explanations are provided for each. For proposals that constitute significant changes in existing policy or add courses of action, brief statements of potential benefits and risks are also provided.

1. Better Communicate Existing City Policies to the Public to Allay Community Concerns

The City generally, and CVPD in particular, already provide services to the community without regard to immigration status. Official CVPD policies go even further in providing that the "Chula Vista Police Department recognizes and values the diversity of the community it serves. It is incumbent upon all employees of this Department to make a personal commitment to equal enforcement of the law and equal service to the public regardless of immigration status. Confidence in this commitment will increase the effectiveness of the Department in protecting and serving the entire community. All individuals, regardless of their immigration status, must feel secure that contacting law enforcement will not make them vulnerable to deportation." [CVPD Policy 428]. CVPD does not enforce immigration laws. Nor does it participate in immigration enforcement activities with federal authorities. Chief Kennedy embraces and promotes these policies within the CVPD and in public whenever possible. Although some would identify these as "sanctuary" policies, Chief Kennedy views these policies as consistent with "best practices" for community policing. Many other jurisdictions within significant immigrant populations have similar policies. The Chief of Police and other City leaders will continue to communicate these facts to the public in an effort to allay public concerns. Additional efforts could be made to improve and expand these communications. South Bay Community Services has already offered to assist with this process through its programs and direct lines of communication within Chula Vista's immigrant community. The City could also engage school districts and other community institutions to assist.

2. Affirm existing City policies with a formal resolution

Existing CVPD administrative policies and protocols that protect and do not target non-citizens could be formally adopted by City Council resolution, and thereby made more "official" and permanent. A formal City Council resolution could also help communicate these policies more broadly to all segments of the population to further allay community concerns.

3. Direct staff to Continue to Monitor Federal and State Action and Report Back to Council

Significant federal and state actions in the areas of immigration enforcement are still

pending or awaiting adjudication. One bill of particular import, commonly referred to as California's "sanctuary state" legislation, is SB 54. (See DISCUSSION Section D.2, above.) Action on this bill could occur as early as this April. The bill appears to have broad community support but is being actively opposed by the California Sheriffs Association and the California Peace Officers Association. SB 54 could change the legal landscape in California regarding local law enforcement relationships with federal immigration and make certain local options for action in this area moot or redundant. Appropriate City action, if any, may be clearer and less risky once such matters are resolved. Until SB 54 is settled, and until the Federal government further defines "sanctuary jurisdiction" and provides more clear direction on what federal funding sources may be at risk, changing existing City policies in this area, or making declarations of status, could be pre-mature and present financial risks. City staff could be directed to continue to monitor these activities and report back to the City Council at regular intervals, or as necessary and appropriate.

4. Take additional actions to provide information to the public and connect immigrants with services

Efforts are already in the works in the City Attorney's office and in other departments, to better connect Chula Vista residents in need with immigration resources by describing such resources and providing links on the City website. If the City were to provide such resources itself, new sources of funding would need to be identified.

5. Declare Chula Vista a "Welcoming City"

As with "sanctuary city," there is no single definition for what it means to be a "welcoming city." A "welcoming city" declaration could be symbolic resolution, or could be coupled with changes in city policy, or with additional City programs. The City could also consider joining the "Welcoming America" network. This non-profit organization appears to have a substantial membership list of cities, counties and non-profits across the country. It professes to offer learning exchanges on national and international levels and access to government leaders across the nation that are creating immigrant-friendly, welcoming communities. More research would be required if the City Council were interested in pursuing this avenue.

Staff is not aware of any current federal or state laws that would reward or punish a City from making a "welcoming city" declaration. However, without a commonly understood definition, such a resolution could create confusion and misunderstanding as to the City's intent among lawmakers, law enforcement, refugee programs and/or the community. If the resolution is accompanied by policy changes that are commonly associated with declared "sanctuary cities" these would also need to be analyzed for possible additional risks. (See discussion, below.)

6. Formally Declare Chula Vista a "Sanctuary City"

The City could opt to formally declare itself a "sanctuary city". Such a resolution could be "symbolic" with no changes in City policy, or it could be accompanied with actual changes in existing city policies and/or the addition of new City programs designed to aid non-legal immigrants.

The benefits of adopting a "sanctuary city" designation would be that it could serve to allay concerns of advocates and immigrants in the community who fear being targeted and deported

as a result of stepped up immigration enforcement activities promised by the Trump administration. The commonly understood definition of “sanctuary” is a place of protection or refuge.

One risk of such a declaration is that the City may be communicating something to the community that it in fact cannot deliver. Designation as a “sanctuary” does not prohibit federal authorities from enforcing immigration laws within the borders of a sanctuary jurisdiction. Nor does a sanctuary or welcoming city designation nullify or limit federal immigration law. Arrests and convictions in Chula Vista as a “sanctuary city” won’t prevent immigration officials from enforcing federal immigration laws, with consequences under federal law beyond of the control of City officials.

The other major risk of a sanctuary city declaration, with or without actual changes in City policy, is the risk of adverse relationships with the federal government and federal law enforcement. The Trump administration continues to pursue orders and legislation that threaten to defund “sanctuary cities”. While federal authority in this area is not clearly established, and there are defenses, sanctuary cities are being targeted and may face costly legal fights to defend against challenges to their policies and/or defunding. These are fights without guaranteed outcomes. If the City were to pursue this path, additional analysis would be warranted to further analyze the seriousness of the threat and the amount of the City’s federal funding that may be at risk. The CVPD is also concerned that its important relationships with federal law enforcement agencies would be undermined; these relationships or integral to CVPD capacity to address serious crime and disorder within the community.

7. Actively support or oppose federal or state laws to advance City interests and policies on immigration enforcement and communities

The City could be more active in supporting or opposing federal or state laws in this area consistent with City-defined interests. Given the City’s existing policies and staffing, it would be appropriate to oppose bills imposing further immigration enforcement requirements on local jurisdictions, mandating cooperation where it was previously optional, or threatening defunding for “non-compliant” cities. The City’s current legislative program could be amended to give the Mayor the authority to act on behalf of the City in these or other related areas. (A related item seeking Council support for Immigration Reform is also on the April 4th agenda.)

Legal challenges to laws or actions inconsistent with the City’s defined interests could also be joined or initiated. The City Attorney would advise, however, that the costs of such endeavors, either in reallocated City Attorney staff time, or in City funding for outside counsel, could be substantial.

Staff Recommendation:

It is fully within City Council discretion to take no action, or to refer one or more of above described options back to staff for further analysis, and for presentation back to City Council for its consideration and approval. With respect to any such actions, staff does recommend, however, that (1) prior to formal action staff be given ample opportunity to analyze any risks to federal funding and additional costs involved; and (2) any Council resolution involving a material change in immigration enforcement policy or a declaration of status be accompanied be a statement that Council’s action is not intended to be in violation of federal or state law.

DECISION-MAKER CONFLICT
Staff has reviewed the decision contemplated by this action and has determined that it is not site-specific and consequently, the 500-foot rule found in California Code of Regulations Title 2, section 18702.2(a)(11), is not applicable to this decision for purposes of determining a disqualifying real property-related financial conflict of interest under the Political Reform Act (Cal. Gov't Code § 87100, et seq.).

Staff is not independently aware, and has not been informed by any City Council member, of any other fact that may constitute a basis for a decision maker conflict of interest in this matter.

LINK TO STRATEGIC GOALS
The City's Strategic Plan has five major goals: Operational Excellence, Economic Vitality, Healthy Community, Strong and Secure Neighborhoods and a Connected Community. This report discusses issues and policies linked to the City's Economic Vitality and Strong and Secure Neighborhoods.

CURRENT YEAR FISCAL IMPACT
This report by itself creates no current year fiscal impacts. If the City Council were to choose one or more options outlined in this report that required additional resources, and/or were inconsistent with federal or state laws in ways that jeopardized federal or state funding, a more detailed analysis would be required. The fiscal impact of loss(es) of funding, if any, would likely occur in future years.

ONGOING FISCAL IMPACT
This report by itself creates no ongoing fiscal impacts. If the City Council were to choose one or more options outlined in this report that required additional resources, and/or were inconsistent with federal or state laws in ways that jeopardized federal or state funding, a more detailed analysis would be required.

ATTACHMENTS
None

Staff Contact: Gary Halbert, City Manager, Roxana Kennedy, Chief of Police and/or Glen Googins, City Attorney

END NOTES

Note: While this topic has received renewed attention under the Trump administration, the "sanctuary city" and "sanctuary policies" are not new concepts. The concept of "sanctuary" being offered by local cities and institutions dates back to the Old Testament. Some churches in medieval Europe also served as "sanctuaries" against government arrest. In the modern era, the City of Berkeley declared itself a "refuge" for illegal immigrants back in 1971. In 1979 LAPD adopted "Special Order 40" prohibiting contacts with the public with the objective of discovering immigration status, and arrests for immigration violations.

[2] This definition is understandable, but not technically correct, as local jurisdictions do not have the legal authority to prevent federal enforcement of immigration laws within their jurisdictions. See DISCUSSION Section C.1.a, below.

[3] The potential legal and other consequences of being known as a "sanctuary city" are more fully discussed in DISCUSSION Sections C.1 and G.7 of this report, below.