

REQUEST FOR COUNCIL ACTION



CITY COUNCIL MEETING DATE:

JANUARY 17, 2017

TITLE:

**SECOND READING ORDINANCE:
RELATING TO THE CITY'S
PROCEDURES CONCERNING SENSITIVE
INFORMATION 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}**

Gerardo Moneo

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

Place revised ordinance on second reading and adopt.

DISCUSSION

On December 20, 2016, the following ordinance was introduced for first reading and City Council authorized publication of title by a vote of 7-0:

ORDINANCE NO. NS-2908 - RELATING TO THE CITY'S PROCEDURES CONCERNING SENSITIVE INFORMATION AND THE ENFORCEMENT OF FEDERAL IMMIGRATION LAW FOLLOWING THE DECLARATION OF THE CITY OF SANTA ANA AS A SANCTUARY FOR ALL ITS RESIDENTS

The ordinance as amended removes Section 7(f) regarding the applicability of Section 7 to subjects in the following circumstances: subjects who have an outstanding criminal warrant; subjects who have been convicted of a felony; and subjects who are defendants who have a pending felony charge. Additional non-substantial changes were made to the ordinance to reorganize and clarify remaining sections, as reflected in Exhibit 1.

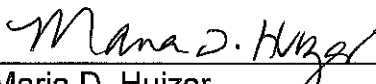
STRATEGIC PLAN ALIGNMENT

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).

Ordinance - Relating to the City's Procedures Concerning Sensitive Information and the Enforcement of Federal Immigration Law
January 17, 2017
Page 2

FISCAL IMPACT

There is no fiscal impact associated with this action.



Maria D. Huizar
Clerk of the Council

- EXHIBITS: 1. Ordinance No. NS-2908 – Marked up version reflecting changes
2. Ordinance No. NS-2908 – Final version without markups

(new language underlined, deleted language in ~~strikeout~~ for tracking purposes only)

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~~ SENSITIVE INFORMATION 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

Exhibit |

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. 2016-086 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 sensitive information about any person except as provided in this ordinance. Sensitive information includes any information that may be considered sensitive or personal by nature, including a person's status as a victim of domestic abuse or sexual assault; status as a victim or witness to a crime generally; citizenship or immigration status; status as a recipient of public assistance; sexual orientation; biological sex or gender identity; or disability. ~~, 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 sensitive information regarding the citizenship or immigration status of about any person except as provided in this ordinance.

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 65. 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 or disclosure is necessary to provide a City service, or where otherwise required by state or federal law or judicial decision.

SECTION 76. 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 any valid and enforceable 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 of immigration law;

(b) assisting with or participating in any immigration enforcement operation or joint operation or patrol that involves, in whole or in part, the enforcement of federal immigration laws;

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

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

(~~e~~f) 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 87. **Implementation of Policies.** Within a reasonable time following adoption of this ordinance, the City shall implement policies to prevent biased-based policing and directing 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 98. **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 109. **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 76.

SECTION 110. **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 1211. **Effective Date.** This ordinance shall become effective thirty (30) days after its adoption.

SECTION 4312. 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
John M. Funk
Assistant City Attorney

AYES: Councilmembers _____

NOES: Councilmembers _____

ABSTAIN: Councilmembers _____

NOT PRESENT: Councilmembers _____

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, Maria 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

ORDINANCE NO. NS-XXX

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

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- 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.

Exhibit 2

G. The City now wishes to enact specific procedures consistent with Resolution No. 2016-086 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.

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SECTION 4. **Disclosing Information Prohibited.** No City agency, department, officer, employee, or agent shall disclose sensitive information about any person except as provided in this ordinance.

SECTION 5. **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 or disclosure is necessary to provide a City service, or where otherwise required by state or federal law or judicial decision.

SECTION 6. **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 immigration law, unless such assistance is required by any valid and enforceable 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 violation of immigration law;

(b) assisting with or participating in any immigration enforcement operation or joint operation or patrol that involves, in whole or in part, the enforcement of federal immigration laws;

(c) 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 immigration law, or otherwise honoring any such detainer, warrant, or request to detain, interview, or transfer;

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

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

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

SECTION 7. **Implementation of Policies.** Within a reasonable time following adoption of this ordinance, the City shall implement policies to prevent biased-based policing and directing 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 8. **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 9. **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 6.

SECTION 10. 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 11. Effective Date. This ordinance shall become effective thirty (30) days after its adoption.

SECTION 12. 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
John M. Funk
Assistant City Attorney

AYES: Councilmembers _____

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CERTIFICATE OF ATTESTATION AND ORIGINALITY

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Date: _____

Clerk of the Council
City of Santa Ana

