



Legislation Details (With Text)

**File #:** 17-045      **Version:** 1      **Name:** San Leandro Commitment to Inclusivity  
**Type:** Staff Report      **Status:** Filed  
**In control:** City Council  
**On agenda:** 2/21/2017      **Final action:** 2/21/2017  
**Enactment date:**      **Enactment #:**  
**Title:** Staff Report for a Resolution Affirming the City of San Leandro's Commitment to the Values of Dignity, Inclusivity, and Respect for All Individuals, Regardless of Ethnic or National Origin, Gender, Race, Religious Affiliation, Sexual Orientation, or Immigration Status and Declaring the City of San Leandro a Sanctuary City  
**Indexes:**  
**Code sections:**  
**Attachments:** 1. Executive Order\_ Enhancing Public Safety.pdf, 2. USCM Major Cities Chiefs statement.pdf, 3. Alameda Resolution.pdf, 4. Berkeley Resolution 11 29 16.pdf, 5. Emeryville Resolution.pdf, 6. Richmond Resolution 12-6-16.pdf, 7. SLUSD Resolution 17-07-signed.pdf, 8. SLZUSD Draft Reso 2 7 2017.pdf, 9. ALCO Sheriffs Office General Order 1.24.pdf, 10. SB 54 (De Leon) CA Values Act FACT SHEET.pdf

Date	Ver.	Action By	Action	Result
2/21/2017	1	City Council	Approved	

Staff Report for a Resolution Affirming the City of San Leandro's Commitment to the Values of Dignity, Inclusivity, and Respect for All Individuals, Regardless of Ethnic or National Origin, Gender, Race, Religious Affiliation, Sexual Orientation, or Immigration Status and Declaring the City of San Leandro a Sanctuary City

**SUMMARY AND RECOMMENDATIONS**

The City Manager recommends that the City Council examine the below analysis and provide direction to staff regarding the attached draft resolution, including but not limited to approval of the attached resolution.

**BACKGROUND & ANALYSIS**

Local San Leandro Efforts to Support Inclusivity and Related Demographics

San Leandro is currently among the most diverse cities in the United States. According to 2011-2015 US Census data, approximately 50% of San Leandro households speak a language other than English at home and 35.5% of San Leandro residents were born outside of the United States. The City of San Leandro has also achieved great strides in embracing this diversity and respecting the civil and human rights of its residents regardless of their ethnic or national origin, gender, race, religious affiliation, sexual orientation, or immigration status.

The City sponsors an array of projects and programs as part of a long-term commitment to support its diverse residents, including: increasingly robust multi-lingual outreach and messaging efforts,

simultaneous translation services at public meetings and events (including tonight's Council meeting), speaker series and other annually-hosted events designed to honor the community's diversity (e.g. MLK oratorical festival, Lunar New Year, and Cinco de Mayo celebrations). The City is also in the process of developing a human service needs gap analysis that will identify specific segments of the local population in need of additional social services. To bolster these efforts, the City is presently working with a Bay Area technology company to better identify which segments of the population are making use of various City services. The City also actively partners with and contributes financially to 211 Alameda County, which connects local residents with important local community services in a multitude of languages.

### General Overview of "Sanctuary Cities"

The term "sanctuary city" is not defined by federal or State law, but it is often used to refer to municipalities that have policies in place that limit assistance for local enforcement of federal immigration laws, and the expenditure of local resources on cooperation with U.S. Immigration and Customs Enforcement Agency (ICE) enforcement programs. Although such policies or ordinances take many forms, they generally include limitations on local law enforcement making arrests based on immigration violations, limitations on local law enforcement gathering information about immigration status, compliance with ICE detainers, and sharing certain information with ICE, including an individual's custody status or release date from local custody (Piers, Badlani, Lederer, *Legal Issues Regarding Local Policies Limiting Local Enforcement of Immigration Laws and Potential Federal Responses*, Memo to Tom Cochran, The U.S. Conference of Mayors, and Darrell W. Stephens, Major Cities Chiefs Association, January 13, 2017).

Supporters of such policies argue that cities have local obligations, and that diverting local resources to support the enforcement of federal programs designed to deter or discourage unauthorized immigration would undermine community relations, disrupt municipal services, interfere with local law enforcement, and violate humanitarian principles. Opponents of such policies argue that local jurisdictions that refuse to support federal immigration policy are encouraging illegal immigration and undermining federal enforcement efforts, as well as risking access to federal funding for important local programs and services.

### Federal Context

The federal government has the exclusive authority to enforce the civil provisions of federal immigration law relating to issues such as admission, exclusion, and deportation. Existing law generally allows the federal government to permit, but not require, the assistance of local officials in such efforts. In 1996, the federal government enacted two pieces of legislation that prohibit state or local governments from restricting voluntary communication with the federal government regarding the immigration status of any individual: § 434 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA, 8 U.S.C. § 1644) and § 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA, 8 U.S.C. § 1373). Both pieces of legislation were designed to facilitate communication between state and local law enforcement agencies with federal immigration authorities regarding undocumented immigrants. While neither of these statutes requires local cooperation or information sharing with federal immigration authorities, both prohibit a policy, statute or ordinance that directly prohibits the voluntary sharing of information once it is acquired.

The above federal statutes have been used to both challenge and support state and local involvement in federal immigration law enforcement. Proponents of state and local involvement have argued that these provisions were intended to maximize cooperation among federal, state, and local law enforcement agencies in enforcing federal immigration laws. Opponents of local involvement in federal immigration policy have argued that these provisions weaken community policing efforts because immigrants feel unsafe cooperating with local law enforcement.

While many state and local jurisdictions throughout the United States have adopted laws or policies 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. Some jurisdictions with "sanctuary" policies do restrict staff from making inquiries about a person's immigration status in certain circumstances. Though some have suggested that this method does not directly conflict with federal requirements that states and municipalities permit the free exchange of information regarding persons' immigration status, the practice results in specified agencies or officers lacking information that they could potentially share with federal immigration authorities.

When conducting its work, ICE generally relies upon cooperation or notification from local law enforcement to the extent practicable and allowed by state and local laws and practices. Refusing to provide such notice or cooperation limits, but does not prevent, the federal government's ability to enforce federal immigration laws.

### Overview of Emerging Federal Efforts

President Trump expressed publicly his opposition to "sanctuary policies," "sanctuary jurisdictions" and "sanctuary cities." Consistent with various speeches and position papers released prior to the November 2016 election, the President issued an executive order on January 25, 2017: "*Enhancing Public Safety in the Interior of the United States*", a copy of which is attached to this report.

The language specific to sanctuary cities within the executive order is contained in Sections 8 and 9, while Section 10 refers to "Previous Immigration Actions and Policies" and reinstates the Secure Communities program.

Key provisions from Section 9 are as follows:

- "*Sec. 9. Sanctuary Jurisdictions. 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.*"
- "*...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 the 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.*"
- "*...the Secretary shall utilize the Declined Detainer Outcome Report or its equivalent and, on a weekly basis, make public a comprehensive list of criminal actions committed by aliens and*

*any jurisdiction that ignored or otherwise failed to honor any detainers with respect to such aliens.”*

- *“The Director of the Office of Management and Budget [OMB] is directed to obtain and provide relevant and responsive information on all Federal grant money that currently is received by any sanctuary jurisdiction.”*

Based on Section 9, the executive order defines a sanctuary city as “jurisdictions that willfully refuse to comply with statute 1373” and the Secretary of Homeland Security has the independent discretion to designate any such jurisdictions. 8 U.S.C. section 1373 provides that:

*Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.*

According to the order, a city is also subject to enforcement actions at the discretion of the Attorney General if (1) they violate Section 1373, or (2) they have policies or practices that prevent or hinder the enforcement of the federal law. In addition, the order directs the Secretary of Homeland Security to develop a weekly list of jurisdictions that have failed to honor detainers and all resulting criminal acts. Finally, the OMB Director is directed to provide information on all federal grant money that is currently received by a sanctuary city.

#### Potential 10<sup>th</sup> Amendment and Other Legal Challenges

Legally, the National Immigration Law Center believes that current local policies in place do not violate Section 1373 and that strong arguments can be made that the executive order stretches the scope of the law, such that it is unconstitutional on its face, and in its effect. It is the City Attorney’s opinion that such an opinion has merit.

Section 1373 is limited to prohibiting local and state governments from enacting laws or policies that limit communication with the Department of Homeland Security (DHS) about information regarding the immigration or citizenship status of individuals. It does not mandate any affirmative action on the part of law enforcement. Therefore, because the City’s proposed resolution does not specifically limit communicating with DHS about individuals’ citizenship or immigration status, or prohibit the maintaining (but not collecting) of such information, the City’s policy is in compliance with the plain terms of Section 1373.

While the level of discretion and ambiguity afforded the Attorney General and Secretary of Homeland Security make it difficult to know exactly which practices, statutes, or policies constitute violations of section 1373, the fact that the order states “all federal grant money” creates a strong argument for unconstitutional coercion should cities make the legal argument that the order violates the U.S. Constitution, specifically the 10<sup>th</sup> Amendment which provides that powers not explicitly given to the federal government are reserved for the states, and the Spending Clause.

For example, the Third Circuit Court of Appeals held in *Galarza v. Szalczyk*, 745 F.3d 634 (3d. Cir. 2014), that administrative attempts to compel local compliance with immigration laws would likely fail as unconstitutional under the 10<sup>th</sup> Amendment’s anti-commandeering principals. Under the U.S. Constitution’s Spending Clause, the court in several cases held that there are limits to the conditions that may be imposed by the Federal government on the receipt of federal funds. The most significant

holding was in a U.S. Supreme Court opinion authored by Chief Justice John Roberts. Chief Justice Roberts wrote in a ruling for a case involving the Affordable Care Act and Medicaid expansion in states that, while Congress can offer Medicaid funds to States to expand health care coverage, *“What Congress is not free to do is to penalize States that choose not to participate in that new program by taking away their existing Medicaid funding”* (*National Federation of Independent Business v. Sebelius*, 132 S. Ct. 2566 [2012]). In short, Congress may use its spending power to create incentives for states to act in accordance with federal policies, but it may not exert conditions that compel the states’ policy choices. In other words, the City of San Leandro could argue that the amount of money at issue to the City would leave the City no real option but to acquiesce, because the impact of the loss of such funds would have specific and detrimental consequences, some of which are unrelated to the executive order’s goal.

In the case of enforcing ICE detainers, in addition to the 10th Amendment, there are questions as to whether the order would violate an individual’s 4th Amendment prohibition on self-incrimination by not creating an independent basis for probable cause to justify detainer.

### Other Federal Efforts in Congress

Members of both parties of the California congressional delegation have signed on as cosponsors to a bill that would extend Deferred Action for Childhood Arrivals (DACA) protections if President Trump discontinues the program via executive order. The “Bar Removal of Individuals who Dream and Grow our Economy Act,” or “BRIDGE Act” would temporarily spare from deportation, and extend employment authorization to, people currently eligible for the Department of Homeland Security’s DACA program.

### Responses from Other Cities

Following the November election and in advance of President Trump’s inauguration, 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 federal threats.

Other cities in the Bay Area have also adopted various resolutions or other policy statements declaring their intention to remain places of refuge or sanctuary, including the Cities of Richmond, Alameda, Berkeley, and Emeryville. Copies of their adopted resolutions are attached. Most of these cities have not explicitly used the phrase “sanctuary city” in their policies.

On January 31, 2017, the City and County of San Francisco filed a lawsuit in U.S. District Court in the Northern District of California, alleging that President Trump’s order violates the 10th Amendment.

Jurisdictions in other parts of the country have taken alternative approaches. For example, days after the issuance of the order, the Mayor of Miami-Dade County, Florida publicly directed the head of the agency’s Corrections and Rehabilitation Department to “honor all immigration detainer requests received from the Department of Homeland Security,” thereby eliminating that community’s prior sanctuary status.

### Response from National League of Cities

In response to the executive order, the National League of Cities (NLC) released the following

statement:

*“There appears to be a false assumption that ‘sanctuary cities’ prevent U.S. Immigration and Customs Enforcement (ICE) agents from enforcing immigration laws. This could not be further from the truth. In practice, federal programs intended to partner with cities and towns on immigration enforcement are broken. The reality is that, in cities across the nation, police departments are routinely cooperating with ICE’s immigration enforcement efforts, while at the same time building constructive relationships with their communities to improve public safety. The order signed by President Trump does not clearly define sanctuary jurisdictions, so it is difficult to foresee how and which cities will be impacted by the order. Legislative efforts in 2016 to define and penalize sanctuary cities were defeated in Congress, which could have cost cities up to \$137 million or more in COPS hiring grants. We call on President Trump to open a dialogue with city leaders, and work with local governments to enact real, comprehensive immigration reform that respects the principles of local control.”*

NLC’s long-standing position is that measures requiring cities to use local law enforcement resources to enforce federal immigration laws are unfunded mandates that impose additional responsibilities on local law enforcement, increase financial liability on local governments, and ultimately move the nation further from its foundational principles of federalism. Contrary to the president’s stated public safety goals, the NLC argues that this action is likely to jeopardize the effectiveness of many local law enforcement efforts. Furthermore, many police chiefs, mayors, and city council members across the country have expressed concerns that such policies impede efforts to preserve police-community relations and ensure that residents feel safe reporting crimes and accessing government services.

#### Response from US Conference of Mayors & Major Cities Police Chiefs

On January 25, 2017, the US Conference of Mayors and Major Cities Police Chiefs Association issued a joint statement, a copy of which is attached to this report. Highlights from that statement include the following:

*“Mayors and police chiefs are committed to ensuring that criminals, regardless of their immigration status, are arrested and properly adjudicated by the criminal justice system... Cities that aim to build trusting and supportive relations with immigrant communities should not be punished because this is essential to reducing crime and helping victims... We must be able to continue to protect the safety of all of our residents while ensuring that local law enforcement is focused on community policing”.*

#### Related Efforts at the State Level

The Trust Act was signed into law in 2013 and went into effect January 1, 2014; one of eight bills signed at the same time in the State’s effort to take action on immigration reform. It requires local law enforcement agencies to release people who have been arrested once their bond is posted or their sentence is up, so long as they have no serious convictions and even if ICE officials have issued a detainer. The replacement Priority Enforcement Program focused on those who pose a danger to society, although Secure Communities has now been re-established by executive order from President Trump.

On September 28, 2016, the Governor also signed into law AB 2792, otherwise known as the TRUTH

Act, which states that if ICE notifies a California jail that they plan to deport someone, they have to also serve a copy to the person in jail. This gives the person the “right to know” when ICE wants to deport them so they can seek counsel.

In December 2016, Senate Pro Tem Kevin de Leon introduced SB 54, which would prohibit local law enforcement officials from performing the functions of a federal immigration officer. If enacted into law, it would create “safe zones” throughout the state by prohibiting immigration enforcement on public schools, hospitals, and courthouse premises. To ensure eligible immigrants are not deterred from seeking services and engaging with state agencies, the bill would also require state agencies to review and update confidentiality policies. A fact sheet on this proposed legislation is attached.

### Current Law Enforcement Practices of the Alameda County Sherriff's Office

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

### Current City of San Leandro Police Department Practices

The San Leandro Police Department equally enforces the law and serves the public without consideration of immigration status. The lack of immigration documentation, alone, has no bearing on the manner in which police officers execute their duties. The Department also has practices in place that prohibit police officers from detaining any individual, for any length of time, for a civil violation of federal immigration laws or a related civil warrant. Department practices require that individuals who are otherwise ready to be released are not detained solely for notification to immigration authorities. Consistent with adopted protocols and relevant laws and statutes, contacts with members of the public, detentions, and arrests must be based on reasonable suspicion or probable cause, and police officers do not initiate law enforcement action based solely on observations related to a subject's actual or perceived immigration status. Nevertheless, any individual who is arrested for committing a crime will continue to be charged and/or referred to the District Attorney's Office for prosecution irrespective of their immigration status.

Police Department command staff may coordinate with ICE personnel upon specific request. For example, such coordination would include investigations that lead to an undocumented individual who has been arrested, and that individual is involved in a violent crime or poses a threat to public safety. Assistance to ICE, as with any other federal law enforcement agency, may also be provided by SLPD in response to emergency situations posing a threat to life or public safety or localized threats to residents, businesses, property or officer safety.

San Leandro and San Lorenzo Unified School Districts

At its February 7, 2017 meeting, the San Leandro Unified School District adopted Resolution 17-07, *Board of Education’s Commitment to the Education of All Children and Making all Campuses a Safe Zone for Students and Families Threatened by Immigration Enforcement*. A copy of that resolution is attached. On February 7, 2017, the San Lorenzo Unified School District also conducted a first reading of Resolution 3505, which would have the effect of declaring itself a Safe Haven School District. A copy of that draft Resolution is also attached, although it should be noted that a modified version may be presented for action at its February 21, 2017 regular Board of Trustees meeting.

Potential Financial Impact of Declaring San Leandro a Sanctuary City

If the President or Congress ultimately carries through on the Executive Order or the President’s stated campaign promise to limit the amount of federal funds allocated to jurisdictions that support “sanctuary” policies, the City of San Leandro is at risk of future defunding and lost access to significant levels of current and anticipated federal funding if the City Council adopts the attached resolution.

The following table provides a snapshot of various local projects, programs and grant applications that are funded from federal sources. Some of the items below, such as Community Development Block Grants (CDBG) and HOME funds are recurring, annual allocations. Most others represent one-time funding awards for specific projects. These projects are funded through a mix of formula allocations (i.e. fixed amounts given to the City each year) and competitive application processes. The table that follows can be viewed as a typical amount of federal funding that the City would expect to have available at any one time. Because many federally-funded projects take multiple years to complete, the projects below should not be construed as an “annual” amount of federal funding. In a typical year, staff estimates that the City receives approximately \$2-3 million in funding from federal sources although this amount is subject to significant variation from year to year.

Of the funding sources outlined in the table, anticipated future applications through federal grant programs would be most at risk because the executive departments that administer these programs have broad discretion to determine future awards, and the agency or department heads of these grant-making agencies report directly to the President.

Description	Federal Agency	Pass Thru	Local Dept.	Funding
(Existing Funding Streams)				
<u>Indirect Federal Funding Through Other Agencies</u>				
HOME Investment Partnership prgm	HUD	A.C.HCD	Com Dev	\$156,659
San Leandro Blvd	USDOT	CalTrans	E&T	\$804,000
Bancroft/Sybil Signal Imprvmnt.	USDOT	CalTrans	E&T	\$448,800
Washington/Chapman Railroad X-ing	USDOT	CalTrans	E&T	\$340,875
Washington/Monterey Signal	USDOT	CalTrans	E&T	\$302,000
Davis St. At Carpentier St.Ped. Signal	USDOT	CalTrans	E&T	\$254,405
E.14 <sup>th</sup> St/144 <sup>th</sup> Ave Signal Imprvmnt.	USDOT	CalTrans	E&T	\$184,230
E.14 <sup>th</sup> St/Joaquin Ave Signal Imprvmnt.	USDOT	CalTrans	E&T	\$335,250
K-8 Students & Senior Traffic Safety	NHTSA	CAOTS	E&T	\$134,000
Accessible pedestrian signals	USDOT	CalTrans/MTC	E&T	\$33,000
Bay Fair Transit Village Specific Plan	USDOT	MTC	Com Dev	<u>\$440,000</u>

Sub-total \$3,433,219

Direct Funding from Federal Govt.

Community Policing Grants	COPS	SLPD	\$246,000
Community Dev. Block Grant	HUD	Com Dev	\$650,260
Lit San Leandro Fiber Expansion	Econ Dev Agency	E&T	<u>\$2,100,000</u>

Sub-total \$2,996,260

Anticipated Future Federal Grant

Description	Federal Agency	Local Agency	Funding
CEC Solar Grant	Dept. of Energy	Public Works	\$2,000,000
Neptune Drive Flood protection	FEMA	E&T	\$500,000
Big Read	Natl Endow.Arts	Library	<u>\$15,000</u>
Sub-Total			\$2,515,000

Public Input to Date

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

- Encouragement to declare San Leandro a sanctuary city
- Requests to quantify potential exposure to loss of federal funding
- Requests for legal assistance to immigrants
- Requests to decouple SLPD from interactions with ICE
- Requests to codify new local policies
- Advocacy for national immigration reform

Proposed City Resolution

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

In light of the fact that the President of the United States has publicly stated that he intends to cancel all federal funding to jurisdictions that support “sanctuary” policies, if the Council chooses to pass this resolution a substantial amount of federal funding may be at risk. Loss of this funding could disrupt the viability of major local road, infrastructure, or flood protection projects designed to serve the public and protect public safety or eliminate sources such as Community Development Block Grants that the City uses to support local non-profits and social service organizations. Nevertheless, it

remains unclear whether the President has the authority to withhold all such funding unilaterally, or if some components of this action would be found unconstitutional and/or would require congressional authorization. The constitutionality of the Executive Order is already the subject of litigation, the outcome of which currently remains unknown.

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

#### Proposed Sanctuary City Outreach Plan

If the City Council adopts the draft resolution establishing San Leandro as a Sanctuary City, staff is prepared to begin an outreach campaign focusing on safety-net communities, if so directed by the City Council. The draft plan would focus on outreach to local organizations and agencies as well as regional community-based organizations that serve and work with affected communities and could include the following locations and/or organizations:

##### Local

- Multi-lingual information at various City facilities
- Outreach to Community Based Organizations (CBO's) in San Leandro
- Outreach to clinics and hospitals
- Multi-lingual information at places of worship in San Leandro
- Outreach to San Leandro schools

##### Regional

- American Civil Liberties Union
- Advancing Justice-Asian Law Caucus
- Centro Legal de la Raza
- East Bay Community Law Center
- Mexican American Legal Defense and Education Fund (MALDEF)
- Muslim Advocates

#### **Fiscal Impacts**

Since federal efforts to deter sanctuary policies are an evolving issue that will inevitably be subject to future litigation, the precise fiscal effects associated with adopting this resolution are not yet fully known. Nevertheless, the City is at risk of losing access to millions of dollars in funding that would otherwise be used towards various projects and programs designed to benefit the health, welfare, and safety of the public.

#### **Attachments to Staff Report:**

- Executive Order - Enhancing Public Safety in the Interior of the United States
- Joint Statement from US Conference of Mayors & Major Cities Police Chiefs
- Alameda County Sheriff's Office General Order 1.24
- SB 54 - Fact Sheet
- Adopted Resolutions from:
  - City of Alameda

- City of Berkeley
- City of Richmond
- City of Emeryville
- San Leandro Unified School District
- San Lorenzo Unified School District (may be subject to change)

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