glendale
california

CITY OF GLENDALE, CALIFORNIA
REPORT TO THE:

Joint ☐ City Council ☒ Housing Authority ☐ Successor Agency ☐ Oversight Board ☐

March 28, 2017

AGENDA ITEM

Report: Local Enforcement of Federal Immigration Laws

1) Resolution affirming the statement of the Chief of Police regarding the detention of individuals based on immigration status; and

COUNCIL ACTION

Public Hearing ☐ Ordinance ☐ Consent Calendar ☐ Action Item ☒ Report Only ☐

Approved for 3/28/17 calendar

ADMINISTRATIVE ACTION

Signature

Submitted by:
Michael J. Garcia, City Attorney

Robert M. Castro, Chief of Police

Prepared by:
Carmen O. Merino, General Counsel - Police

Approved by:
Scott Ochoa, City Manager

Reviewed by:
Yasmin K. Beers, Assistant City Manager

Michael J. Garcia, City Attorney

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RECOMMENDATION

It is recommended that the City Council adopt the attached resolution affirming the Chief of Police's statement regarding the detention of individuals based on immigration status.

BACKGROUND/ANALYSIS

I. Federal Immigration Law

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. Current law generally allows the federal government to permit, but not require, the assistance of local officials in such efforts. Title 8 U.S.C. Section 1373 specifically provides, in pertinent part:

> (a) 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.
>
> (b) Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:
> (1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.
> (2) Maintaining such information.
> (3) Exchanging such information with any other Federal, State, or local government entity.

The Immigration and Nationality Act (INA) contains both civil and criminal provisions. Most undocumented individuals arrested by ICE go through civil administrative proceedings to determine whether they should be deported. Violations of the INA that result in deportation are civil in nature and are only enforceable by the federal government.

Occasionally, ICE issues "detainers" (also referred to as "ICE holds" or "ICE detainers") to law enforcement agencies that have in their custody individuals who are sought for civil deportation proceedings. The detainers are merely requests to hold individuals for a period not to exceed 48 hours beyond the time when they would be eligible for release in order to allow ICE to assume custody. There is no legal requirement that agencies comply with these requests. In 2014, a federal district court in Portland, Oregon held in the case of *Miranda-Olivares v. Clackamas County* (2014 WL 1414305, not reported) that the county violated the plaintiff's constitutional rights by detaining her without probable cause when it chose to hold her on a detainer even though she was eligible for release. This holding is consistent with a ruling from the U.S. Court of Appeals for the Third Circuit in *Galarza v. Szalczyk*, 745 F3d. 634 (3d Cir. 2014). As a result of these federal cases, many local jurisdictions no longer honor detainers.

II. Executive Order

On January 25, 2017, President Trump issued an Executive Order entitled "Enhancing Public Safety in the Interior of the United States". (See Exhibit 1) This order focuses on immigration and is directed at eliminating access to federal funding to "sanctuary jurisdictions."

Section 1 of the Executive Order discusses the Order's purpose and provides, in pertinent part:

> Sanctuary jurisdictions across the United States willfully violate Federal law in an attempt to shield aliens from removal from the United States. These jurisdictions have caused immeasurable harm to the American people and to the very fabric of our Republic.
> ***
> Although Federal immigration law provides a framework for Federal –State partnerships in enforcing our immigrations laws to ensure the removal of aliens who have no right to be in the United States, the Federal Government has failed to discharge this basic sovereign responsibility. We cannot faithfully execute the immigration laws of the United States if we exempt classes or categories of removable aliens from potential enforcement. The purpose of this order is to direct executive departments and agencies ... to employ all lawful means to enforce the immigration laws of the United States.

Section 2 sets forth the policy of the Executive Branch to, among other things:

> (c) Ensure that jurisdictions that fail to comply with applicable Federal law do not receive Federal funds, except as mandated by law.

Section 8 discusses "Federal-State Agreements." This section states, "It is the policy of the executive branch to empower State and local law enforcement agencies across the county to perform the functions of an immigration officer in the interior of the United States to the maximum extent permitted by law." Subparagraph (a) further provides that the "Secretary [of Homeland Security] shall immediately take appropriate action to engage with the Governors of the States, as well as local officials, for the purpose of preparing to enter into agreements under section 287(g) of the INA (8 U.S.C. 1357(g))." It appears that the entering into such agreements is voluntary.

Section 9 discusses "Sanctuary Jurisdictions" and specifically provides: "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.

Section 9 (a) of the Executive Order further discusses the willful refusal of jurisdictions to comply with Section 1373 and states:

> In furtherance of this policy the Attorney General and the Secretary [of Homeland Security], in their discretion and to the 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 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. (Emphasis added.)

In addition to the requirements under Section 1373, it is unclear how the Secretary of Homeland Security will determine what constitutes a "sanctuary jurisdiction." Although the order specifically includes jurisdictions that violate Section 1373, it also appears to include jurisdictions that do not comply with detainer requests. Section 9(b) states:

> To better inform the public regarding the public safety threats associated with sanctuary jurisdictions, 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 inclusion of jurisdictions that do not comply with detainer requests creates uncertainty for many local agencies because, under federal case law, local agencies are not required to comply with detainers. Further, holding individuals beyond the time they are eligible for release creates potential civil rights liability.

The term "sanctuary jurisdiction" is not defined in the Executive Order. Although the term "sanctuary city" is not defined by federal or state law, it is often used to refer to jurisdictions that have policies that restrict local enforcement of federal immigration laws and limit the expenditure of local resources in cooperating with ICE's enforcement efforts.

Some cities, including the City and County of San Francisco and the County of Santa Clara, are challenging the Executive Order as it pertains to local government on Tenth Amendment grounds. The Tenth Amendment states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

III. Glendale Police Department Policies and Practices

A. Statement by the Chief of Police

Chief Castro recently issued the following statement regarding immigration:

> The Glendale Police Department does not have the authority nor the responsibility to incarcerate or detain individuals solely based on immigration status. Our fundamental duties are based on public safety – serving the community, while focusing efforts primarily on crime prevention and law enforcement. Our responsibility is to protect the lives of the community we are sworn to serve and honor the principles of democracy upon which this country was founded.

The policies of the Glendale Police Department reflect the values in the Chief's statement. Glendale Police Department Policy 415.2 states:

> It is the policy of the Glendale Police Department that all members make personal and professional commitments to equal enforcement of the law and equal service to the public. Confidence in this commitment will increase the

effectiveness of this department in protecting and serving the entire community and recognizing the dignity of all persons, regardless of their immigration status.

Further, Policy 415.4 specifically provides that an officer "should not detain any individual, for any length of time, for a civil violation of federal immigration laws or a related civil warrant." In this regard, the Glendale Police Department does not honor ICE detainers.

With regard to information sharing, Policy 415.7 provides that department employees will not prohibit or restrict any other employee from sending to or receiving information from ICE regarding citizenship or immigration status or exchanging such information with any other federal, state or local government entity. This policy is in accord with Section 1373.

Thus, if the Council desires to make a statement regarding public safety related to this matter, it is recommended that Council adopt the proposed resolution affirming the Chief's recent statement on the matter.

B. Agreement with ICE for Detention Services

The Glendale Police Department currently has one agreement with the U.S. Department of Homeland Security, Immigration and Customs Enforcement, Office of Detention and Removal. This Inter-Governmental Service Agreement was entered into in September 2007 and signed by former City Manager James Starbird Under this agreement, the City of Glendale provides detention services for ICE detainees. The rate is $85.00 per day per person. The ICE detainees housed in the Police Department's jail are not charged with criminal violations and are held by ICE pending the administrative hearing process for deportation. In 2015 and 2016, the City was paid $1,190, and $6,035, respectively, for detention services under this contract. The contract continues indefinitely and may be terminated by either party with sixty days' written notice.

FISCAL IMPACT

Adopting the attached resolution will have no fiscal impact.

ALTERNATIVES

Alternative 1: Adopt a resolution affirming the statement of the Chief of Police regarding the detention of individuals based on immigration status.

Alternative 2: Not adopt a resolution affirming the statement of the Chief of Police.

Alternative 3: The City Council may consider any other alternative not proposed by staff.

CAMPAIGN DISCLOSURE

Not applicable.

EXHIBITS

Exhibit 1: Executive Order - "Enhancing Public Safety in the Interior of the United States"

Presidential Documents

Executive Order 13768 of January 25, 2017

Enhancing Public Safety in the Interior of the United States

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Immigration and Nationality Act (INA) (8 U.S.C. 1101 *et seq.*), and in order to ensure the public safety of the American people in communities across the United States as well as to ensure that our Nation's immigration laws are faithfully executed, I hereby declare the policy of the executive branch to be, and order, as follows:

Section 1. *Purpose.* Interior enforcement of our Nation's immigration laws is critically important to the national security and public safety of the United States. Many aliens who illegally enter the United States and those who overstay or otherwise violate the terms of their visas present a significant threat to national security and public safety. This is particularly so for aliens who engage in criminal conduct in the United States.

Sanctuary jurisdictions across the United States willfully violate Federal law in an attempt to shield aliens from removal from the United States. These jurisdictions have caused immeasurable harm to the American people and to the very fabric of our Republic.

Tens of thousands of removable aliens have been released into communities across the country, solely because their home countries refuse to accept their repatriation. Many of these aliens are criminals who have served time in our Federal, State, and local jails. The presence of such individuals in the United States, and the practices of foreign nations that refuse the repatriation of their nationals, are contrary to the national interest.

Although Federal immigration law provides a framework for Federal-State partnerships in enforcing our immigration laws to ensure the removal of aliens who have no right to be in the United States, the Federal Government has failed to discharge this basic sovereign responsibility. We cannot faithfully execute the immigration laws of the United States if we exempt classes or categories of removable aliens from potential enforcement. The purpose of this order is to direct executive departments and agencies (agencies) to employ all lawful means to enforce the immigration laws of the United States.

Sec. 2. *Policy.* It is the policy of the executive branch to:

(a) Ensure the faithful execution of the immigration laws of the United States, including the INA, against all removable aliens, consistent with Article II, Section 3 of the United States Constitution and section 3331 of title 5, United States Code;

(b) Make use of all available systems and resources to ensure the efficient and faithful execution of the immigration laws of the United States;

(c) Ensure that jurisdictions that fail to comply with applicable Federal law do not receive Federal funds, except as mandated by law;

(d) Ensure that aliens ordered removed from the United States are promptly removed; and

(e) Support victims, and the families of victims, of crimes committed by removable aliens.

Sec. 3. *Definitions.* The terms of this order, where applicable, shall have the meaning provided by section 1101 of title 8, United States Code.

Sec. 4. *Enforcement of the Immigration Laws in the Interior of the United States.* In furtherance of the policy described in section 2 of this order, I hereby direct agencies to employ all lawful means to ensure the faithful execution of the immigration laws of the United States against all removable aliens.

Sec. 5. *Enforcement Priorities.* In executing faithfully the immigration laws of the United States, the Secretary of Homeland Security (Secretary) shall prioritize for removal those aliens described by the Congress in sections 212(a)(2), (a)(3), and (a)(6)(C), 235, and 237(a)(2) and (4) of the INA (8 U.S.C. 1182(a)(2), (a)(3), and (a)(6)(C), 1225, and 1227(a)(2) and (4)), as well as removable aliens who:

(a) Have been convicted of any criminal offense;

(b) Have been charged with any criminal offense, where such charge has not been resolved;

(c) Have committed acts that constitute a chargeable criminal offense;

(d) Have engaged in fraud or willful misrepresentation in connection with any official matter or application before a governmental agency;

(e) Have abused any program related to receipt of public benefits;

(f) Are subject to a final order of removal, but who have not complied with their legal obligation to depart the United States; or

(g) In the judgment of an immigration officer, otherwise pose a risk to public safety or national security.

Sec. 6. *Civil Fines and Penalties.* As soon as practicable, and by no later than one year after the date of this order, the Secretary shall issue guidance and promulgate regulations, where required by law, to ensure the assessment and collection of all fines and penalties that the Secretary is authorized under the law to assess and collect from aliens unlawfully present in the United States and from those who facilitate their presence in the United States.

Sec. 7. *Additional Enforcement and Removal Officers.* The Secretary, through the Director of U.S. Immigration and Customs Enforcement, shall, to the extent permitted by law and subject to the availability of appropriations, take all appropriate action to hire 10,000 additional immigration officers, who shall complete relevant training and be authorized to perform the law enforcement functions described in section 287 of the INA (8 U.S.C. 1357).

Sec. 8. *Federal-State Agreements.* It is the policy of the executive branch to empower State and local law enforcement agencies across the country to perform the functions of an immigration officer in the interior of the United States to the maximum extent permitted by law.

(a) In furtherance of this policy, the Secretary shall immediately take appropriate action to engage with the Governors of the States, as well as local officials, for the purpose of preparing to enter into agreements under section 287(g) of the INA (8 U.S.C. 1357(g)).

(b) To the extent permitted by law and with the consent of State or local officials, as appropriate, the Secretary shall take appropriate action, through agreements under section 287(g) of the INA, or otherwise, to authorize State and local law enforcement officials, as the Secretary determines are qualified and appropriate, to perform the functions of immigration officers in relation to the investigation, apprehension, or detention of aliens in the United States under the direction and the supervision of the Secretary. Such authorization shall be in addition to, rather than in place of, Federal performance of these duties.

(c) To the extent permitted by law, the Secretary may structure each agreement under section 287(g) of the INA in a manner that provides the most effective model for enforcing Federal immigration laws for that jurisdiction.

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.

(a) In furtherance of this policy, the Attorney General and the Secretary, in their discretion and to the 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 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.

(b) To better inform the public regarding the public safety threats associated with sanctuary jurisdictions, 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.

(c) The Director of the Office of Management and Budget is directed to obtain and provide relevant and responsive information on all Federal grant money that currently is received by any sanctuary jurisdiction.

Sec. 10. *Review of Previous Immigration Actions and Policies.* (a) The Secretary shall immediately take all appropriate action to terminate the Priority Enforcement Program (PEP) described in the memorandum issued by the Secretary on November 20, 2014, and to reinstitute the immigration program known as "Secure Communities" referenced in that memorandum.

(b) The Secretary shall review agency regulations, policies, and procedures for consistency with this order and, if required, publish for notice and comment proposed regulations rescinding or revising any regulations inconsistent with this order and shall consider whether to withdraw or modify any inconsistent policies and procedures, as appropriate and consistent with the law.

(c) To protect our communities and better facilitate the identification, detention, and removal of criminal aliens within constitutional and statutory parameters, the Secretary shall consolidate and revise any applicable forms to more effectively communicate with recipient law enforcement agencies.

Sec. 11. *Department of Justice Prosecutions of Immigration Violators.* The Attorney General and the Secretary shall work together to develop and implement a program that ensures that adequate resources are devoted to the prosecution of criminal immigration offenses in the United States, and to develop cooperative strategies to reduce violent crime and the reach of transnational criminal organizations into the United States.

Sec. 12. *Recalcitrant Countries.* The Secretary of Homeland Security and the Secretary of State shall cooperate to effectively implement the sanctions provided by section 243(d) of the INA (8 U.S.C. 1253(d)), as appropriate. The Secretary of State shall, to the maximum extent permitted by law, ensure that diplomatic efforts and negotiations with foreign states include as a condition precedent the acceptance by those foreign states of their nationals who are subject to removal from the United States.

Sec. 13. *Office for Victims of Crimes Committed by Removable Aliens.* The Secretary shall direct the Director of U.S. Immigration and Customs Enforcement to take all appropriate and lawful action to establish within U.S. Immigration and Customs Enforcement an office to provide proactive, timely, adequate, and professional services to victims of crimes committed by removable aliens and the family members of such victims. This office shall provide quarterly reports studying the effects of the victimization by criminal aliens present in the United States.

Sec. 14. *Privacy Act.* Agencies shall, to the extent consistent with applicable law, ensure that their privacy policies exclude persons who are not United States citizens or lawful permanent residents from the protections of the Privacy Act regarding personally identifiable information.

Sec. 15. *Reporting.* Except as otherwise provided in this order, the Secretary and the Attorney General shall each submit to the President a report on the progress of the directives contained in this order within 90 days of the date of this order and again within 180 days of the date of this order.

Sec. 16. *Transparency.* To promote the transparency and situational awareness of criminal aliens in the United States, the Secretary and the Attorney General are hereby directed to collect relevant data and provide quarterly reports on the following:

(a) the immigration status of all aliens incarcerated under the supervision of the Federal Bureau of Prisons;

(b) the immigration status of all aliens incarcerated as Federal pretrial detainees under the supervision of the United States Marshals Service; and

(c) the immigration status of all convicted aliens incarcerated in State prisons and local detention centers throughout the United States.

Sec. 17. *Personnel Actions.* The Office of Personnel Management shall take appropriate and lawful action to facilitate hiring personnel to implement this order.

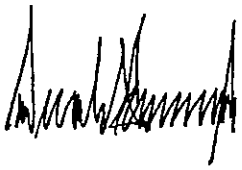
Sec. 18. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
January 25, 2017.

[FR Doc. 2017–02102
Filed 1–27–17; 11:15 am]
Billing code 3295–F7–P

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF CITY OF GLENDALE, CALIFORNIA AFFIRMING THE STATEMENT OF THE CHIEF OF POLICE REGARDING THE DETENTION OF INDIVIDUALS BASED ON IMMIGRATION STATUS

WHEREAS, the City Council is greatly concerned about public safety in the City of Glendale; and

WHEREAS, Chief of Police Robert Castro recently issued the following statement regarding immigration and public safety:

> "The Glendale Police Department does not have the authority nor the responsibility to incarcerate or detain individuals solely based on immigration status. Our fundamental duties are based on public safety – serving the community, while focusing efforts primarily on crime prevention and law enforcement. Our responsibility is to protect the lives of the community we are sworn to serve and honor the principles of democracy upon which this country was founded"; and

WHEREAS, the City Council desires to affirm the Chief of Police's statement and support the values expressed therein; and

WHEREAS, the Council desires to ensure the efficient use of limited resources to fight crime and address public safety issues impacting the City of Glendale.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GLENDALE DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. All of the foregoing recitals set forth herein above are true and incorporated herein.

SECTION 2. The City Council affirms the statement of Chief of Police Robert Castro regarding the detention of individuals based on immigration status.

SECTION 3. The City Clerk shall certify to the passage of this Resolution.

Adopted this _____ day of _____, 2017.

By: _____
Mayor

ATTEST:

_____
City Clerk

STATE OF CALIFORNIA)
) SS
COUNTY OF LOS ANGELES)

I, ARDASHES KASSAKHIAN, Clerk of the City of Glendale, certify that the foregoing Resolution No. _____ was adopted by the Council of the City of Glendale at a regular meeting held on the _____ day of _____, 2017, and that same was adopted by the following vote:

Ayes:

Noes:

Absent:

Abstain:

_____
City Clerk

APPROVED AS TO FORM

Carmen O. Merino
General Counsel - Police

Date: 3/23/17