



AGENDA REPORT

City Attorney's Office

DATE:	March 11, 2025
TO:	Mayor Martinez and Members of the City Council
FROM:	Dave Aleshire, City Attorney Shannon L. Moore, Chief Assistant City Attorney Kimberly Y. Chin, Senior Assistant City Attorney Chris Dykzeul, Assistant City Attorney
Subject:	Adopt Sanctuary City Ordinance.
FINANCIAL IMPACT:	There is no immediate financial impact, but there is a risk of withdrawal, rescission, or loss of federal grant funds. Federal responses are evolving. Approximately \$62,278,429 in federal funding could be at risk.
PREVIOUS COUNCIL ACTION:	August 20, 1990 (Ordinance No. 29-90) June 5, 2018 (Ordinance No. 12-18)
STATEMENT OF THE ISSUE:	Adopt an ordinance limiting the use of City resources for federal immigration enforcement that is consistent with state and federal law.
RECOMMENDED ACTION:	INTRODUCE an ordinance (first reading) adding Chapter 2.30 entitled "Limitations on Use of City Resources for Federal Immigration Enforcement" to the Richmond Municipal Code – City Attorney's Office (Dave Aleshire/Shannon L. Moore/ Kimberly Y. Chin/Chris Dykzeul 510-620-6509.

DISCUSSION:

At the Council meeting on January 28, 2025, the Richmond City Council unanimously directed the City Attorney's Office to review the City of Richmond's current legislation protecting undocumented immigrants and to examine current activity at the federal, state and local levels and to provide recommendations on additional protections for undocumented immigrants in line with the State of California and other local communities (See Item N.2.a)

Consistent with Council's direction, the City Attorney's Office evaluated the City of Richmond's current sanctuary city protections and provided recommendations in ordinance form adding additional protections for undocumented immigrants that is consistent with state and federal law.

Background

The Richmond City Council adopted Ordinance No. 29-20 (Attachment 1) and Ordinance No. 12-18 (Attachment 2) which provide certain sanctuary city protections at the local level to the immigrant community.

Additionally, the State of California has named itself a "sanctuary state," following the passage of Senate Bill 54 in 2017. In 2019, the Ninth Circuit Court of Appeal rejected the first Trump administration's challenge to SB 54's limitations on local assistance with federal immigration enforcement efforts and underscored the right of state and local jurisdictions not to assist federal authorities, particularly when local resources are already scarce. *U.S. v. California*, 921 F.3d 865 (9th Cir. 2019). The following counties have passed legislation limiting assistance to federal immigration enforcement efforts: Alameda, Los Angeles, Monterey and San Francisco. A number of California cities have also passed similar legislation, including Alameda, Berkeley, Davis, Emeryville, Hayward, Oakland, Petaluma, San Jose, Santa Cruz, San Leandro and Santa Rosa.

In light of the current Trump administration's threats of mass deportations and its rescission of the long-standing federal policy restricting Immigration and Customs Enforcement ("ICE") and the potential of ICE arrests in sensitive areas such as schools, after-school programs, hospitals, community health centers, and places of worship, the City by its ordinance would reaffirm to the community its status as a Sanctuary City and bolster existing policies should ICE officials contact city officials or visit city offices to ask questions, collect information, or request assistance with arresting any undocumented or naturalized resident or visitor beyond what is legally required.

From reviewing various ordinances, sanctuary is fundamentally about public safety: the need for the community to feel safe. When all community members, documented or undocumented, are able to attend school and after-school programs, hospitals and health centers, and places of worship without the threat of deportation, a more connected thriving community results.

The City has an interest in ensuring that confidential information collected in the course of carrying out its municipal functions, including but not limited to public programs and criminal investigations, is not used for unintended purposes that could hamper collection of information vital to those functions. The City must be able to reliably collect confidential information from all residents. To solve crimes and protect the public, local law enforcement depends on the cooperation of all City residents. Information gathering and cooperation may be jeopardized if release of personal information results in a person being taken into immigration custody.

Assisting federal immigration endeavors also come at a cost to the City. Pursuant to Section 287.7 of Title 8 of the Code of Federal Regulations, the City is not reimbursed by the federal government for the costs associated with civil immigration detainers alone. The full cost of responding to a civil immigration detainer can include, but is not limited to, extended detention time, the administrative costs of tracking and responding to detainers, and the legal liability for erroneously holding an individual who is not subject to a civil immigration detainer. Compliance with civil immigration detainers and involvement in civil immigration enforcement diverts limited local resources from programs that are beneficial to the City. The Richmond Police Department has affirmed that its mission is to protect the safety of all people in the community irrespective of document status.

Finally, there are legal concerns with leveraging City resources for federal immigration endeavors. Given that civil immigration detainers are issued by immigration officers without judicial oversight, and the regulation authorizing civil immigration detainers provides no minimum standard of proof for their issuance, there are serious questions as to their constitutionality. Unlike criminal warrants, which must be supported by probable cause and issued by a neutral magistrate, there are no such requirements for the issuance of a civil immigration detainer. Several federal courts have ruled that because civil immigration detainers and other ICE "Notice of Action" documents are issued without probable cause of criminal conduct, they do not meet the Fourth Amendment requirements for state or local law enforcement officials to arrest and hold an individual in custody. *Miranda-Olivares v. Clackamas Co.*, No. 3:12-cv-02317-ST, 2014 WL 1414305 (D.Or. April 11, 2014) (finding that detention pursuant to an immigration detainer is a seizure that must comport with the Fourth Amendment); see also *Morales v. Chadbourne*, 996 F. Supp. 2d 19 (D.R.I 2014); *Villars v. Kubiowski*, No. 12-cv-4586, 2014 WL 1795631 (N.D. Ill. May 5, 2014).

Accordingly, the purpose of the proposed ordinance, adding Chapter 2.30, Limitations on Use of City Resources for Federal Immigration Enforcement, to Article II, Administration and City Government, within the City's municipal code, is to foster respect and trust between the City, its programs, and law enforcement and residents, to protect limited local resources, to encourage cooperation between residents and City officials, including especially law enforcement and public health officers and employees, and to ensure community security and due process for all. The proposed ordinance is not intended to prohibit the City or its personnel from complying with state or federal law.

The current administration has stated they will act against those interfering with enforcement of federal immigration law and has threatened to withhold or condition federal funds from jurisdictions that limit assistance with federal immigration efforts. *E.g.*, Executive Order 14,159, Protecting the American People Against Invasion, 90 Fed. Reg. 8237. (Jan. 20, 2025). However, such efforts have been successfully challenged in the past, resulting in injunctions preventing the federal government and Department of Justice from withholding or conditioning those funds. *E.g.*, *City and County of San Francisco v. Garland*, 42 F.4th 1078 (9th Cir. 2022); *City and County of San Francisco v. Barr*, 965 F.3d 753 (9th Cir. 2020); *City of Los Angeles v. Barr*, 941 F.3d 931 (9th Cir. 2019). The legal status of the current efforts will be subject to judicial review. It will be the intent of the City of Richmond to follow all binding legal precedent.

DOCUMENTS ATTACHED:

Attachment 1 – Ordinance No. 29-90

Attachment 2 – Ordinance No. 12-18

Attachment 3 – Proposed Ordinance