

## ORDINANCE NO. 826 – C.S.

### ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFICA ADDING CHAPTER 16 TO TITLE 4 OF THE PACIFICA MUNICIPAL CODE TO MAKE PACIFICA A SANCTUARY CITY

#### Sec. 4-16.01. Findings and Determinations.

A. The Pacifica City Council finds and declares the following:

1. WHEREAS, Immigrants are valuable and essential members of our community who contribute to our vibrant culture and power our economic engine; and
2. WHEREAS, A relationship of trust, respect, and open communication between the City of Pacifica's immigrant community and local law enforcement is central to the public safety of Pacifica; and
3. WHEREAS, Fostering a relationship of trust, respect, and open communication between City officials and the community is essential to the City's mission of delivering public services; and
4. WHEREAS, Trust between City officials and the Community will diminish if City officials, including local law enforcement agencies, do not take steps to ensure that residents' sensitive or private data is protected; and
5. WHEREAS, Due to current events, immigrant community members fear approaching police when they are victims of, and witnesses to, crimes, and avoid seeking basic health services or attending school, to the detriment of the public safety and well-being of all Pacifica residents; and
6. WHEREAS, Immigration law enforcement is a responsibility of the federal government; and
7. WHEREAS, The City has limited resources, and those resources should be expended to provide local public services; and
8. WHEREAS, Entangling local law enforcement with federal immigration enforcement programs diverts already limited resources and blurs lines of accountability between local and federal government; and
9. WHEREAS, Local participation in federal immigration enforcement programs also raises constitutional concerns, including the prospect that Pacifica residents could be detained in violation of the Fourth Amendment, targeted on the basis of race or ethnicity in violation of the Equal Protection Clause, or denied access to education based on immigration status; and
10. WHEREAS, This Ordinance seeks to ensure effective policing, protect the safety, well-being, and constitutional rights of the residents of Pacifica and to direct the Pacifica's limited resources to matters of greatest concern to Pacifica.

#### Sec. 4-16.02. Definitions.

For purposes of this chapter, these terms are defined as follows:

"Federal immigration authority" means any officer, employee, or person otherwise paid by or acting as an agent of United States Immigration and Customs Enforcement or United States Customs and Border Protection, or any division thereof, or any other officer, employee, or person otherwise paid by or acting as an agent of the United States Department of Homeland Security who is charged with immigration enforcement.

"Local law enforcement agency" means any agency of a city, county, city and county, special district, or other political subdivision of the state that is authorized to enforce criminal statutes, regulations, or local ordinances; or to operate jails or to maintain custody of individuals in jails; or to operate juvenile detention facilities or to maintain custody of individuals in juvenile detention facilities; or to monitor compliance with probation or parole conditions.

“Local agency” means any county or city department, agency, division, commission, council, board or other body in Pacifica that is authorized to provide services to the residents of Pacifica, including but not limited to health facilities, courthouses, and public schools.

“Civil immigration warrant” means any warrant for a violation of federal civil immigration law, and includes civil immigration warrants entered in the National Crime Information Center database.

“Hold request” means a request from a federal immigration authority asking a local law enforcement agency to maintain custody of an individual currently in its custody beyond the time he or she would otherwise be eligible for release in order to facilitate transfer to federal immigration authorities and includes, but is not limited to, Department of Homeland Security (DHS) Form I-247.

“Judicial warrant” means a warrant based on probable cause and issued by a federal judge or a federal magistrate judge that authorizes federal immigration authorities to take into custody the person who is the subject of the warrant.

“Health facility” includes hospitals, medical offices, clinics, and substance abuse treatment facilities.

“Immigration enforcement” includes any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal civil immigration law, and also includes any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal criminal immigration law that penalizes a person’s presence in, entry, or reentry to, or employment in, the United States, including, but not limited to, violations of Section 1253, 1324c, 1325, or 1326 of Title 8 of the United States Code.

“Serious or Violent Felony” is any felony listed in subdivision (c) of Section 1192.7 and subdivision (c) of Section 667.5 of the Penal Code.

**Sec. 4-16.03. Restrictions on use of local resources and personnel from engaging in immigration enforcement.**

- A. Local law enforcement agencies shall not do any of the following:
1. Use agency or department moneys, facilities, property, equipment, or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes, including, but not limited to, any of the following:
    - a) Inquiring into or collecting information about an individual’s immigration status.
    - b) Detaining an individual on the basis of a hold request.
    - c) Making arrests based on civil immigration warrants, unless any of the conditions listed in Section 4-16.03(C) herein apply.
    - d) Giving federal immigration authorities access to interview individuals in agency or department custody for immigration enforcement purposes.
    - e) Assisting federal immigration authorities in the activities described in 1357(a)(3) of Title 8 of the United States Code.
    - f) Performing the functions of an immigration officer, whether pursuant to Section 1357(g) of Title 8 of the United States Code or any other law, regulation, or policy, whether formal or informal.
  2. Use agency or department moneys, facilities, property, equipment, or personnel to investigate, enforce, or assist in the investigation or enforcement of any federal program requiring registration of individuals on the basis of race, gender, sexual orientation, religion, or national or ethnic origin.
  3. Make agency or department databases or the information contained therein available to anyone or any entity for the purpose of immigration enforcement or investigation or enforcement of any federal program requiring registration of individuals on the basis of race, gender, sexual orientation, religion, immigration status, or national or ethnic origin. Any agreements in existence on the date that this chapter becomes operative that make any agency or department database

available for purposes prohibited by this paragraph are terminated on that date.

4. Place law enforcement officers under supervision of federal immigration enforcement agencies or employ local law enforcement officers deputized as special federal officers or special federal deputies for the purpose of enforcing federal immigration law.

B. Notwithstanding any other law, in no event shall local law enforcement agencies transfer an individual to federal immigration authorities for purposes of immigration enforcement or detain an individual at the request of federal immigration authorities for purposes of immigration enforcement absent a judicial warrant.

C. Notwithstanding the limitations in Sec. 4-16.03(A), this Ordinance does not prevent local law enforcement agencies from doing any of the following:

1. Participating in a joint law enforcement task force, so long as the primary purpose of the joint law enforcement task force is not immigration enforcement, and the enforcement or investigative duties of the task force is related to a violation of state or federal law unrelated to immigration enforcement.
2. Making inquiries into information necessary to certify an individual who has been identified as a potential crime or trafficking victim for a T or U Visa pursuant to Section 1101(a)(15)(T) or 1101(a)(15)(U) of Title 8 of the United States Code.
3. Responding to a request for information regarding a person who is serving a term pursuant to a conviction for a Serious or Violent Felony.

D. Nothing in this Ordinance shall be construed to prevent local law enforcement from providing assistance to secure a scene or act in cases of emergency when federal immigration officials are present, for the purpose of ensuring community safety.

E. This Ordinance does not prohibit or restrict any government entity or official from voluntarily sending to, or receiving from, federal immigration authorities, information regarding the citizenship status, lawful or unlawful, of an individual, or from voluntarily requesting from federal immigration authorities immigration status information, lawful or unlawful, of any individual, or maintaining or exchanging that information with any other federal, state, or local government entity, pursuant to Sections 1373 and 1644 of Title 8 of the United States Code.

**Sec. 4-16.04. Equal Access to Services.**

A. The City shall not condition the provision of City benefits, opportunities, or services on matters related to citizenship or immigration status unless required to do so by statute, federal regulation, or court decision.

B. City officials shall prohibit federal immigration authorities from operating on or gaining physical access to any lands or buildings owned, leased, or controlled by the City of Pacifica, if the sole purpose for gaining access to such facilities is for the enforcement of federal immigration law, by using the following procedure:

1. Local agencies shall deny any request or attempt by any federal immigration authorities to access local agency lands or buildings, or obtain information about individuals employed or served by the local agency.
2. Local agencies shall refer federal immigration authorities to the City Attorney's Office. The City Attorney's Office shall only advise local agencies to provide access if federal immigration authorities present a warrant signed by a federal or state judge, not including administrative law



judges, specifying the persons to be arrested and/or places to be searched. Access shall be strictly limited to the terms of the warrant signed by a federal or state judge.

C. City officials shall display prominently information on the rights of immigrants to access their services, and shall implement a policy that limits assistance with ICE to the fullest extent possible under state and federal law.

D. Where presentation of a state driver's license or identification card is accepted as adequate evidence of identity, presentation of a photo identity document issued by the person's nation of origin, such as a driver's license, passport, or matricula consular (consulate-issued document), shall be accepted and shall not subject the person to a higher level of scrutiny or different treatment than if the person had provided a state driver's license or identification card except that this subsection shall not apply to the completion of the federally mandated I-9 forms.

**Sec. 4-16.05. Data Privacy.**

A. City officials and law enforcement agencies shall protect an individual's privacy and handle sensitive and confidential information with care.

1. City officials and law enforcement agencies shall not release sensitive details outside the agency regarding an individual in law enforcement custody, including a person's release date, unless the agency is compelled to do so through a judicial warrant, or court decision issued by an Article III Court.

2. City officials and law enforcement agencies shall not provide sensitive personal information about an individual, including, but not limited to, information regarding an individual's home address or work address, unless the agency is compelled to do so through a judicial warrant, or court decision issued by an Article III Court.

B. In order to ensure that eligible individuals are not deterred from seeking services or engaging with state agencies, the City shall review its confidentiality policies and identify any changes necessary to ensure that information collected from individuals is limited to that necessary to perform agency duties and is not used or disclosed for any other purpose. Any necessary changes to those policies shall be made consistent with agency or department procedures.

C. All applications, questionnaires, and interview forms used in relation to City benefits, opportunities, or services shall be promptly reviewed by the local agencies and any questions regarding citizenship or immigration status, other than those required by statute, ordinance, federal regulation or court decision, shall not be asked. Existing forms that unnecessarily ask for citizenship or immigration status shall cease being used within 60 days of the passage of this Ordinance, and shall be destroyed in accordance with the City's records retention schedule.

**Sec. 4-16.06. No Private Right of Action.**

In undertaking the adoption and enforcement of this Chapter, the City is assuming an undertaking only to promote the general welfare. This Ordinance does not create or form the basis of liability on the part of the City, its agents, departments, officers or employees. It is not intended to create any new rights for breach of which the City or any of its employees are liable for money or any other damages to any person who claims that such breach proximately caused injury.

**Sec. 4-16.07. Severability.**

The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid.

**Sec. 5. Publication.** The City Clerk is hereby ordered and directed to certify to the passage of this ordinance by the City Council of the City of Pacifica, California, and cause the same to be published once in the Pacifica Tribune, a newspaper of general circulation, published and circulated in the City of Pacifica, California.

**Section 6. Effective Date.** This ordinance shall be in full force and effect thirty (30) days after its adoption.

This ordinance was introduced on September 25, 2017 and duly adopted by the City Council of the City of Pacifica at its regular meeting on October 9, 2017 by the following vote:

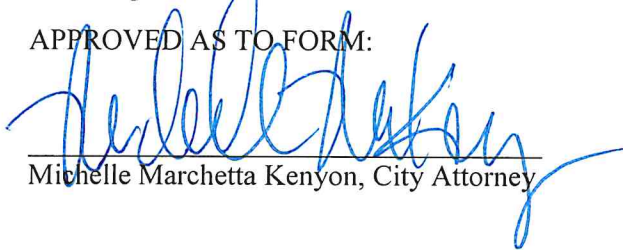
AYES, Councilmembers: Martin, Digre, Keener  
NOES, Councilmembers: Vaterlaus, O'Neill  
ABSENT, Councilmembers: None  
ABSTAIN, Councilmembers: None

  
Mike O'Neill, Mayor

ATTEST:

  
Kathy O'Connell, City Clerk

APPROVED AS TO FORM:

  
Michelle Marchetta Kenyon, City Attorney