



== CITY OF ==

NEWPORT BEACH

City Council Staff Report

Attachment 6

April 10, 2018
Agenda Item No. 13

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: Aaron Harp, City Attorney - 949-644-3131,
aharp@newportbeachca.gov

PREPARED BY: Michael Torres, Assistant City Attorney

TITLE: Adoption of Resolution No. 2018-23 Opposing Senate Bill 54
(California Values Act)

ABSTRACT:

On October 5, 2017, California Governor Jerry Brown approved Senate Bill ("SB") 54, which generally prohibits California law enforcement agencies from using local agency money or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes, and limits when California law enforcement agencies may transfer an individual to immigration authorities. Prior to its adoption, on August 8, 2017, the City Council directed the City Manager to send a letter opposing SB 54 to Kevin de León, President pro Tempore of the California State Senate and sponsor of SB 54.

On March 6, 2018, Attorney General Jeff Sessions filed a federal lawsuit to overturn portions of SB 54 because they are preempted by federal immigration laws. Since the filing of the federal lawsuit, a number of local agencies have taken action to register their opposition to SB 54. This agenda item provides the City Council with the opportunity to formally oppose SB 54 through the adoption of the attached resolution.

RECOMMENDATION:

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly; and
- b) Adopt Resolution No. 2018-23, *A Resolution of the City Council of the City of Newport Beach, California, Opposing Senate Bill 54 (California Values Act)*.

FUNDING REQUIREMENTS:

There is no fiscal impact related to this item.

DISCUSSION:

The Supremacy Clause of the United States Constitution mandates that the Constitution and federal laws made in furtherance thereof are the supreme law of the land notwithstanding any state laws to the contrary. The federal government regulates immigration under its constitutional and statutory authorities through a series of federal laws, and enforces the immigration laws through its executive agencies, including the Departments of Justice, State, and Labor, and the Department of Homeland Security including its component agencies U.S. Immigration and Customs Enforcement ("ICE"), and U.S. Customs and Border Protection.

On August 8, 2017, while SB 54 was under consideration in the California Legislature, the City Council directed the City Manager to send a letter opposing SB 54 to Kevin de León, President pro Tempore of the California State Senate and sponsor of SB 54. The letter emphasized the City of Newport Beach's concerns that SB 54 could create roadblocks and ambiguity when the Newport Beach Police Department participates in crime suppression activities that may involve (but not target) undocumented persons in addition to U.S. citizens and residents and result in inquiries from federal ICE officials.

On October 5, 2017, Governor Jerry Brown approved SB 54, which became effective January 1, 2018 and, among other things, generally prohibits California law enforcement agencies from using local agency money or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes and limits when California law enforcement agencies may transfer an individual to immigration authorities. SB 54 also creates affirmative obligations for California law enforcement agencies to report certain data regarding transfers of individuals to federal immigration authorities.

The adoption of SB 54 has created a conflict between state and federal law and has restricted local law enforcement's ability to cooperate with federal authorities to protect California residents. On March 6, 2018, the federal government filed a complaint in the United States District Court, Eastern District of California for the case entitled *United States of America v. State of California, et al.* (Case No. 2:18-cv-00490-JAM-KJN) seeking a judicial declaration invalidating and enjoining the enforcement of provisions of SB 54 as preempted by federal immigration laws and therefore in violation of the Supremacy Clause of the United States Constitution.

Additionally, several local agencies have taken formal action opposing SB 54. For example, on March 19, 2018, the City of Los Alamitos introduced an ordinance exempting itself from SB 54. Further, on March 27, 2018, the Orange County Board of Supervisors voted to intervene in the federal lawsuit against SB 54. The attached resolution formally expresses the City's opposition to SB 54.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this action is not subject to the California Environmental Quality Act (“CEQA”) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENT:

Attachment A – Resolution No. 2018-23

ATTACHMENT A

RESOLUTION NO. 2018-23

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF NEWPORT BEACH, CALIFORNIA, OPPOSING
SENATE BILL 54 (CALIFORNIA VALUES ACT)**

WHEREAS, the Supremacy Clause of the United States Constitution provides the "Constitution, and the Laws of the United States which shall be made in Pursuance thereof ... shall be the supreme Law of the Land ... any Thing in the Constitution or Laws of any State to the Contrary notwithstanding";

WHEREAS, the federal government of the United States of America regulates immigration under its constitutional and statutory authorities, and enforces immigration laws through its executive agencies, including the Departments of Justice, State, and Labor, and the Department of Homeland Security including its component agencies U.S. Immigration and Customs Enforcement ("ICE"), and U.S. Customs and Border Protection;

WHEREAS, on October 5, 2017, California Governor Jerry Brown approved Senate Bill ("SB") 54, which enacted California Government Code Sections 7284 *et seq.* entitled the "California Values Act";

WHEREAS, SB 54 became effective January 1, 2018 and, among other things, generally prohibits California law enforcement agencies from using local agency money or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes and limits when California law enforcement agencies may transfer an individual to immigration authorities. SB 54 also creates affirmative obligations for California law enforcement agencies to report certain data regarding transfers of individuals to federal immigration authorities;

WHEREAS, the City Council has a history of opposition to SB 54, which includes the City Council's direction on August 8, 2017, for the City Manager to send a letter in opposition to SB 54 to Kevin de León, President pro Tempore of the California State Senate and sponsor of SB 54;

WHEREAS, the City Council's opposition emphasized the City of Newport Beach's concerns that SB 54 could create roadblocks and ambiguity when the Newport Beach Police Department participates in crime suppression activities that may involve (but not target) undocumented persons in addition to U.S. citizens and residents and result in inquiries from federal ICE officials;

WHEREAS, on March 6, 2018, Attorney General Jeff Sessions filed a federal lawsuit in the United States District Court, Eastern District of California for the case entitled *United States of America v. State of California, et al.* (Case No. 2:18-cv-00490-JAM-KJN) seeking a judicial declaration invalidating and enjoining the enforcement of provisions of SB 54 as preempted by federal immigration laws and therefore in violation of the Supremacy Clause of the United States Constitution; and

WHEREAS, the City of Newport Beach respects and supports the United States Constitution.

NOW, THEREFORE, the City Council of the City of Newport Beach resolves as follows:

Section 1: The City Council is committed to protecting the City of Newport Beach's residents through the enforcement of local, state, and federal laws. The adoption of SB 54 has created a conflict between state and federal law and has restricted local law enforcement's ability to cooperate with federal authorities to protect California residents. This conflict leaves the City Council no choice but to publically state its opposition to SB 54.

Section 2: The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

Section 3: If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 4: The City Council finds the adoption of this resolution is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

Section 5: This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting the resolution.

ADOPTED this 10th day of April, 2018.

Marshall "Duffy" Duffield
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE


Aaron C. Harp
City Attorney

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