

LEGAL SERVICES DEPARTMENT

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TO: Kyle Lobner, Chair of the Safety and Licensing Committee
Members of the Safety and Licensing Committee

FROM: Darrin Glad, Assistant City Attorney

DATE: October 25, 2017

RE: Compiled Questions with Responses Regarding Resolution # 18-R-17

Many questions were forwarded to our office within the past week. I have copied and pasted the questions below (in bold) and provided an answer, if known. If an answer was provided by another individual, it is noted accordingly.

I understand from Atty Walsh that there is pending legislation at the state level that would affect the circumstances brought forward in this resolution, wouldn't it be better to wait until we understand the decision at the state level and how that affects us? (Plank)

2017 Senate Bill 275 is currently being considered within the Committee on Labor and Regulatory Reform. If passed, the Bill prohibits municipalities from enacting or enforcing an ordinance, resolution, or policy that prohibits the enforcement of a federal or state law relating to illegal aliens or ascertaining whether an individual has satisfactory immigration status. Penalties for violations include \$1,000/day fine and creates government liability for damages caused by illegal aliens.

Generally speaking, this area of law is not well-settled. As a result, any legislation or administrative policies directing local governments to take part in immigration enforcement or attempts to cut off sources of funding to localities unless they partake in immigration enforcement schemes could face significant challenges in court. As such, there could be significant time delays and costs associated with challenging such legislation and/or policies. If funds were withheld pending litigation, there would also be temporary budgetary losses. Finally, some of the challenges to federal policies would not apply to State legislation, which reduces the overall likelihood of a successful challenge to such legislation.

Wisconsin has three municipalities that have been described as "sanctuary cities": Madison, Milwaukee County, and Racine. It has been reported that Milwaukee County is among 10 locations that the US Justice Department was scrutinizing to determine if they should lose some federal grant money for failing to prove that they were adhering to federal immigration law.

From a risk point of view, it would not open up the city to any risk if we wait and see what happens at the State level; while passing the resolution does open the city up to the possibilities of those exposures in the proposed bill.

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Regarding the policing resolution and recent action at S&L, I'd like a legal opinion on if this were to pass how it directly impacts any status as a designated sanctuary city (or not). (Croatt)

Based upon my review, "Sanctuary City" is not defined within Wisconsin or federal law. I also note that "sanctuary city" is not used in the resolution.

Because the term "Sanctuary City" is open for definition, is overly broad on its face, and not used in the current proposed resolution, it is difficult to determine whether this resolution would impact any status as a designated "sanctuary city."

Also, I'd really like to know what the 3rd section of the 'be it resolved' section completely means from a legal perspective as it relates to section 1 and 2 and what the APD currently does. (Croatt)

While Sections 1 and 2 detail situations and entities in which the resolution will be controlling, Section 3 sets forth three specific areas that this resolution does not affect. There is, however, an apparent inconsistency in Sections 1 and 3. Section 1 specifically notes that "the Appleton Police Department shall not...devote *any public resources* to the enforcement of federal immigration law" and section 3 states that the resolution "addresses the *discretionary use of legal city resources.*" When read together, it appears that the limitation expressed in section 3 for discretionary use of resources controls the entire resolution, including section 1.

Additionally, I'd like to know if this were to pass, and State legislation passes at a later future date, would our municipal policy be no longer enforceable at that point? (Croatt)

That would depend entirely upon what law or laws are passed. Based on the language in 2017 SB 275, if passed as-is, this resolution would be inconsistent with the proposed bill and as such, would not be enforceable – and if enforced, could be subject to a \$1,000/day fine as well as government liability for damages caused by illegal aliens.

I'd like a legal opinion on how approving (or voting for) this resolution conflicts (if it does) with the oath of office for Alderpersons and the oath of office for any Police Officer. It seems to me to be in direct conflict with oath language. (Croatt)

The resolution does not conflict with the oath for APD Officers. Similarly, the resolution does not conflict with the oath for Alderpersons. An alderperson would have to knowingly violate the United States constitution or the constitution of the State of Wisconsin for there to be a conflict with the oath.

From Chief Thomas: We will never waiver in adhering to our oath of office which includes upholding the laws of the State of Wisconsin and the ordinances of the City of Appleton. That is what we have done and how we have addressed the immigration enforcement issue and it is what we will continue to do whether this resolution is passed or not.

I am interpreting that this resolution intends to remove burden from our police force and to help immigrants to feel more comfortable reporting crimes. Does the APD support this resolution? (Baranowski)

From Chief Thomas: The risk and potential litigation the city may face outweigh any benefit of having a city policy established for this issue. This issue is too fluid at both the national and state levels and there

are too many unknowns.

The time we needed to be sending this message and reaching out to these communities was over a year ago, during the presidential election cycle, and especially right after the election. We had no Diversity Coordinator for almost a year during the most racially divisive time we have been through in decades. It was the men and women of the Police Department that courageously and compassionately stepped into this heated and divisive topic because it was the right thing to do for the members of that community and for the safety of our entire community. They met individually with students who were being harassed, even elementary school aged children, to let them know we cared and they were safe with us. I met with a group of officers, school staff, and parents at East HS, who were in tears because of what their children were dealing with. We set up meetings with Casa Hispana and other advocacy groups to get this message out and to try and build stronger, trusting, relationships with them. And we were very public in putting out our message through the media, and obviously received some strong negative responses from those with very different views and a lack of understanding of the law.

We will continue to do what we have done. We know this issue will continue to be discussed at the national and state level and those in the immigrant community will continue to need us. This resolution will not change anything we do and may create more issues for us in the future so we would not support it.

Would this resolution result in the loss of any Community Development Block Grants, or other federal or state grants that are currently helping nonprofits in the Fox Cities? (Baranowski)

Unable to answer this, but Director Saucerman indicated that federal funds have been received to support CDBG in the past 5 years.

What is an APD's oath of office? (Baranowski)

I, state your name, having been duly qualified and appointed as a _____ for the City of Appleton do hereby swear or affirm that I will support the Constitution of the United States and the Constitution of the State of Wisconsin, uphold the Laws of the State of Wisconsin and the Ordinances of the City of Appleton, obey all lawful orders of my superiors, adhere to the Law Enforcement Code of Ethics, and faithfully discharge the duties of my office to the best of my ability, so help me God.

Does this resolution in any matter, implied or otherwise perceived, violate said oath? (Baranowski)

Officers are bound by their oath to uphold the ordinances of the City of Appleton. If an ordinance is later found to be unconstitutional, an officer's prior (and otherwise lawful) conduct does not violate their oath. Similarly, if State law changes, making an ordinance unenforceable, an officer's prior conduct does not violate their oath.

Chief Thomas has addressed these questions in his response above.

How much federal funding do we on average received? How much over the past 5 years? (Baranowski)

Director Saucerman provided the following response to this inquiry.

On average, the City receives approximately \$3.5 million annually. In total, over the past 5 years, the City has received approximately \$16.9 million.

If we were to lose federal funding, what programs would be in jeopardy? (Baranowski)

Director Saucerman provided the following response to this inquiry.

It is uncertain which programs might be in jeopardy but federal funds have been received to support the following programs over the past 5 years: CDBG, Housing Rehabilitation Grant, Police Grants (bulletproof vest program, Edward Byrne Memorial), Fire Equipment (not annual grants, but occasional purchases), and Valley Transit.

Does Council or should Council have the authority to tell the APD that they shall not enter into any partnership with ICE in order to receive delegated authority for immigration enforcement?

(Baranowski)

Resolutions aimed at prohibiting voluntary cooperation with ICE have been the target of federal scrutiny and in at least one occasion, the courts ruled against the municipality.

Does Mayor Hanna support this Resolution in its entirety? If not, does Mayor Hanna support sections of this resolution and which are those sections and why? (Baranowski)

The mayor indicated that he doesn't support the resolution because he finds that it is unnecessary and doesn't change the way our police department operates.

Does Chief Thomas support this Resolution in its entirety? If not, does Chief Thomas support sections of this resolution and which are those sections and why? (Baranowski)

Chief Thomas has addressed these questions in his response above.

Is there action in the state of WI to adopt a similar resolution statewide? (Baranowski)

I am not aware of any similar resolution similar to this at the state level.

If so, would the City of Appleton be bound by a resolution adopted by the state? (Baranowski)

It would depend on the language of any resolution.

Does this Resolution change the way the APD conduct business today with the community? If so, how? (Baranowski)

From Chief Thomas: No.

Does this Resolution Reaffirm the Public Safety Function of Local Law Enforcement in Appleton as we see it today? (Baranowski)

Chief Thomas has addressed this question in his response above.