COUNCIL AGENDA: 9/18/2018
ITEM: 2.17 (18-1302)

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Toni J. Taber, CMC City Clerk

SUBJECT: **SEE BELOW**

DATE: September 25, 2018

SUBJECT: Response to Federal Administration Actions on Immigration.

RECOMMENDATION:
As recommended by the Rules and Open Government Committee on September 12, 2018, adopt a resolution denouncing the U.S. Department of Justice's Zero Tolerance Policy that resulted in the inhumane separation of families and a call for the immediate reunification of existing separated families.
CEQA: Not a Project, File No. PP17-010, City Organizational & Administrative Activities resulting in no changes to the physical environment. (Peralez)
[Rules Committee referral 09/12/18 - Item G(3)]

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: RULES AND OPEN GOVERNMENT COMMITTEE

FROM: Councilmember Raul Peralez

SUBJECT: SEE BELOW

DATE: September 6, 2018

Approved by:

Date: 9/6/18

SUBJECT: RESPONSE TO FEDERAL ADMINISTRATION ACTIONS ON IMMIGRATION

RECOMMENDATION

Agendize to the September 18th City Council Meeting for deliberation:

1. Adoption of a resolution denouncing the U.S. Department of Justice's (DOJ) Zero Tolerance Policy that resulted in the inhumane separation of families and a call for the immediate reunification of existing separated families, and,

2. Direct the City Manager to review and comment on the U.S. Department of Homeland Security (DHS) and Health and Human Services' (HHS) proposed new regulation to implement the Flores Settlement Agreement (FSA).

BACKGROUND & DISCUSSION

Zero Tolerance Policy

On April 6, 2018, U.S. Attorney General Jeff Sessions on behalf of the Federal Administration introduced the Zero Tolerance Policy calling for the prosecution of all individuals who illegally enter the United States from the Southern border.[1] The policy consequently, allowed for border patrol officers to separate children from their parents as they were imprisoned to await prosecution. Children, ranging from toddlers to teenagers,

[1] Hegarty, Aaron. (2018, June 27). Timeline: Immigrant children separated from families at the border. *USA Today.* Retrieved from https://www.usatoday.com/story/news/2018/06/27/immigrant-children-family-separation-border-timeline/734014002/.

were assigned to HHS to be placed in temporary housing. Since then, more than 2,600 children have been separated from their parents under this policy.[2] Many of the families apprehended at the border were seeking asylum in the U.S. and had come from Central American countries fleeing gang violence and destructive destitution, with the hopes of finding safety and refuge in the U.S.

According to court documents and federal officials, of the more than 2,600 children separated, 2,157 children have been "discharged," or are no longer under government custody.[3] Though the number *may* sound promising, the definition of "discharge" tells us otherwise. For example, while that number may refer to children reunited with their parents, it also includes children assigned to a sponsor within the U.S. or had turned 18 years old. In other words, even though the federal administration "discharged" 2,157 children, it does not necessarily constitute that 2,157 children were reunited with their parents they were once separated from. Not to forget that even though on June 26, 2018, U.S. District Judge Dana Sabraw ordered the U.S. border authorities to reunite separated families within 30 days and now months later, there are still more than 490 children still separated from their families with no real timeline for reunification.[4]

Due to this reactionary form of policy making and failure to thoroughly prepare and implement, the results thus far have been devastating:

- Parents are coerced into signing their own deportation order without due process, under the threat of whether they wanted to be reunited with their children.[5]
- Children have been reported to appear mentally or physically troubled when they finally reunite with their parents. Some children seemed detached and traumatized while others believed that their parents did not want them and thus the reason for their separation.

Not only was the policy implemented abruptly and poorly, but if the administration continues its failure to reunite existing families, the longer lasting the mental health damages may be.

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[2] Status Report, Ms. L. v. U.S. Immigration and Customs Enforcement et al, No. 3:18-cv-00428 (S.D. Cal. Aug 30, 2018). Retrieved from https://www.documentcloud.org/documents/4802443-Status-Report.html

[3] Status Report, Ms. L. v. U.S. Immigration and Customs Enforcement et al, No. 3:18-cv-00428 (S.D. Cal. Aug 30, 2018). Retrieved from https://www.documentcloud.org/documents/4802443-Status-Report.html

[4] Barajas, Joshua. (2018, August 31). Nearly 500 migrant children remain separated from their parents. Here's what we know. *PBS Newshour*. Retrieved from https://www.pbs.org/newshour/nation/nearly-500-migrant-children-remain-separated-from-their-parents-heres-what-we-know

[5] Jordan, Miriam. (2018, July 27). 'Why Did You Leave Me?' The Migrant Children Left Behind as Parents Are Deported. *The New York Times*. Retrieved from https://www.nytimes.com/2018/07/27/us/migrant-families-deportations.html

Flores Settlement Agreement

On September 6, 2018, the DHS and HHS announced a new proposed rule that would "adopt in regulations relevant and substantive terms of the Flores Settlement Agreement." Under the FSA, there are certain protocols that must be adhered when children are detained at the border. The 1997 court agreement requires the federal government to locate adequate housing for unaccompanied children with family or friends as quickly as possible or if housing cannot be located, then it requires them to house children in "least restrictive conditions." Then in 2014, the Ninth Circuit stated that the FSA also covered accompanied minors and that they could not be detained for more than 20 days.[6] The proposed regulation by DHS and HHS would attempt to replace and impose new rules in line with the FSA.

Ideally, the new rule should ultimately align or enhance the original intent of FSA. However, the vague details that this administration has presented raises a lot of questions and uncertainty around the detention and treatment of children. Considering the failure of the Zero Tolerance Policy, it would be prudent as one of the largest cities of a border state, that we review this administrative action and provide feedback according to our city values.

CONCLUSION

As one of the most diverse cities in the United States and one that has embraced a Welcome Policy to immigrants, we as a City must send a message that we will have zero tolerance for any inhumane approach to immigration policy. Immigration has been a topic of debate since the birth of our nation and it has made progress through thoughtful civil discussion and action. We as the City of San José must continue to rise above the current administration's recklessness, uphold our responsibility as citizens to scrutinize, and ultimately advocate for better U.S. immigration laws, policies, and practices.

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[6] Lind, Dara and Scott, Dylan. (2018, June 20). Flores agreement: Trump's executive order to end family separation might run afoul of a 1997 court ruling. *Vox*. Retrieved from https://www.vox.com/2018/6/20/17484546/executive-order-family-separation-flores-settlement-agreement-immigration