



City of Santa Clara

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Agenda Report

20-771

Agenda Date: 9/29/2020

REPORT TO COUNCIL

SUBJECT

Approve City Position on Proposed League of California Cities' 2020 Annual Conference Resolution
[Council Pillar: Enhance Community Engagement and Transparency]

BACKGROUND

The League of California Cities (League) will hold its Annual Conference virtually on October 7-9, 2020. As part of the Annual Conference, the League will hold its Annual Business Meeting where the membership will act on Annual Conference Resolutions that establish League policy. Annual Conference Resolutions guide cities and the League to improve the quality, responsiveness, and vitality of local government in California.

The League's *2020 Annual Conference Resolutions Packet* (Attachment 1) contains one resolution that has been introduced for consideration at the Annual Conference and referred to League policy committees. There is a separate agenda report (RTC # 20-318) that is being brought forth to the Council tonight to designate Mayor Lisa M. Gillmor as the City's voting delegate and Councilmember Kathy Watanabe as the alternate for the Annual Conference.

DISCUSSION

This report transmits the League's *2020 Annual Conference Resolutions Packet* (Attachment 1) which contains a proposed resolution that will be considered during the League's virtual Annual Business Meeting on October 9, 2020. As recommended by the League, staff requests Council approval of the position the voting delegate should take on behalf of the City regarding the resolution discussed in this report.

Below is a description of the resolution followed by a background, analysis and recommendation prepared by staff and the City's legislative consultant, Townsend Public Affairs. The recommendation options are: Support, Oppose, or Take No Action. Any resolution submitted to the General Assembly must be concurred by five cities or by city officials from at least five or more cities.

Resolution #1 - Resolution of the General Assembly of the League of California Cities Calling for an Amendment of Section 230 of the Communications Decency Act of 1996 to Require Social Media Companies to Remove Materials Which Promote Criminal Activities

The City of Cerritos has introduced a resolution for consideration, which states that the League of California Cities should urge Congress to amend Section 230 of the federal Communications Decency Act of 1996 (DCA) to limit the immunity provided to online platforms where their forums enable criminal activity to be promoted. If enacted, the policy objectives under this resolution would incentivize social media companies to establish and implement a reasonable program to identify and remove content that solicits criminal activity.

The resolution calls for Congress to amend Section 230 of the DCA to condition immunity from civil liability on the following three conditions:

- Online platforms must establish and implement a reasonable program to identify and take down content which solicits criminal activity;
- Online platforms must provide law enforcement information which will assist in the identification and apprehension of persons who use the services of the platform to solicit and engage in criminal activity; and
- An online platform that willfully or negligently fails in either of these duties is not immune from enforcement of state and local laws which impose criminal or civil liability for such failure.

Concurrence: City of Hawaiian Gardens; City of Lakewood; City of Ontario; City of Rancho Cucamonga; and City of Roseville

Related City Policies:

- Public Safety Legislative Advocacy Position
- Council Priority: Manage Our Workforce Capacity and Resources

Background: The DCA was one of the first attempts made by the United States Congress to regulate pornographic and indecent material on the internet. The Act attempted to regulate both indecency when presented to children, and obscenity in cyberspace. The provisions related anti-indecency were ultimately struck down by the United States Supreme Court.

In addition, the DCA contains Section 230, which states: "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." This section provides that online intermediaries that host or re-publish speech are protected against a range of laws that might otherwise be used to hold them legally responsible for what others say and do. There are certain exceptions for certain criminal and intellectual property-based claims, but otherwise Section 230 creates broad protections that have allowed free speech online to flourish.

The City of Cerritos is sponsoring this resolution in reaction to events whereby persons, using social media platforms, have been able to coordinate locations, dates, and times for planned criminal activity. These activities have resulted in acts of looting and vandalism which have led to economic harm for targeted businesses, as well as losses to cities who have used resources to prevent such acts from occurring once plans are discovered. While social media allows people to connect in real time with others all over the world, organized illegal activity using social media is made easier by the anonymous nature of virtual interactions.

Shortly after the killing of George Floyd on May 26, 2020, demonstrations and civil unrest began in cities across the country. Since that time, there have been many reports of looting happening across the country, during what were otherwise mostly peaceful demonstrations. Combined with the speculation of who is really behind the looting and why, the mayhem has usurped the message of peaceful protestors, causing a great deal of property damage in the process. Likewise, these criminal actions have upended the livelihood of some small business owners, many of whom were already

reeling in the wake of the COVID-19 pandemic.

The President has also recently issued an Executive Order on Preventing Online Censorship and has implored the U.S. Attorney General to develop a proposal for federal legislation that “would be useful to promote the policy objectives of this order.” The President has not been subtle in communicating his desire to ultimately see legislation heavily slanted toward the preservation of free speech on social media, which some interpret as a maneuver to preempt Twitter and Facebook from regulating speech they otherwise deem as hateful or demonstrably false.

Analysis: The first condition in the resolution appears straight forward in its benefit to cities - if a platform was required to identify and take down content which solicits criminal activity, cities could see a reduction in criminal activity. However, the level of reduction cannot be measured, as there are many variables that contribute to the carrying out of criminal activity, not the least of which is promotion on an online platform. That said, any reduction in overall criminal activity would be a positive and is consistent with the goals outlined in the City’s Public Safety Legislative Advocacy Position.

The second condition in the resolution requires that online platforms provide relevant information to law enforcement to assist in the identification and apprehension of persons who use the services of the platform to solicit and to engage in criminal activity. This section would most likely require the development of new procedures and protocols that govern law enforcement’s usage and retention of such information. Those new policies and procedures would undoubtedly raise privacy concerns depending on how wide the latitude is for law enforcement to request such information. In those circumstances, cities themselves could end up incurring new liability for the governance of data that could either violate certain privacy rules or increase their data governance costs.

Additionally, this resolution raises questions about the level of expectation of local law enforcement when they receive information from a social media platform about potential criminal activity. It is unclear from this resolution whether local law enforcement will be required to act on all information received from online platforms and according to what timeline; if a local government would be exposed to claims of liability if they received information and did not act; the costs that local law enforcement would incur in order to develop policies and procedures to receive, maintain, and store information received from the online platforms; if current staffing resources are enough to handle the increase in information that would come to local law enforcement or to pursue each potential criminal threat received. Ultimately, if Congress decides to take action as prompted by the resolution, the City of Santa Clara may experience a substantial increase in work, especially for the City Attorney’s Office and Police Department, which is inconsistent with Council Priority: Manage Our Workforce Capacity and Resources.

Lastly, while the goal of the resolution, to reduce criminal activities coordinated on online platforms, is commendable, this resolution raises many constitutional issues, as well as practical issues regarding implementation.

If Congress acted in a manner that is requested by this resolution, social media providers would effectively be required to monitor, and potentially report, on every conversation that occurs on any online platform. This would place the tech industry in the position of making subjective determinations about what conversations are acceptable, what constitutes the planning of a criminal activity, and

what, if any, steps should be taken to inform states and local governments of the conversations. This monitoring and reporting would likely solicit challenges that such a system infringes on free speech and government censorship. Law enforcement agencies already have concerns about enforcing free speech, individual page guidelines, and privacy matters.

Santa Clara Police Department has experienced a handful of incidents on social media where individuals posted something to cause community fear, which served as the conduit for misinformation and unnecessarily drained public safety resources. In those cases, it would have been helpful for the department to have the ability to quickly gain relevant information to assist in the identification of the responsible persons and/or had aid to mitigate the spread of inaccurate information. However, the department and the City as a whole do not have the capacity to develop new procedures and protocols and act on all information received from online platforms based on current resources.

If Congress elects to consider legislation to help reduce the coordination of criminal activity on online platforms, some of the above considerations may be considered and directly addressed. Further information on these specific details may result in the City choosing to support such a proposal; however, at the current time, based on the information in the current resolution, staff and the City's legislative consultant recommend that the City oppose the current resolution.

Recommended Position: Oppose

As stated, the recommended position provides the City's voting delegate/alternate guidance on how to vote on the issues as they pertain to City business.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

FISCAL IMPACT

There is no immediate fiscal impact other than staff time to prepare this report. However, if the League resolution is passed and Congress elects to consider legislation to help reduce the coordination of criminal activity on online platforms, there may be some fiscal impacts for the City. The City and its businesses may gain or save money between redress for actual economic harm suffered and/or the preventive measures taken to stop criminal activity from occurring in the first place. The City will also most likely require more staffing resources to meet the additional workload of active enforcement of online platforms. It is unclear what the net fiscal impact will be.

COORDINATION

The report has been coordinated with the City Attorney's Office and Police Department.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website

and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <mailto:clerk@santaclaraca.gov>.

RECOMMENDATION

Approve an "Oppose" position for the proposed League Annual Conference Resolution of the General Assembly of the League of California Cities calling for an amendment of Section 230 of the Communications Decency Act of 1996 to require social media companies to remove materials which promote criminal activities, and authorize the City's voting delegate/alternate to cast a vote consistent with the City Council's adopted position.

Reviewed by: Nadine Nader, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. League of California Cities 2020 Annual Conference Resolutions Packet