



Office of the Mayor

CONSENT CALENDAR

July 25, 2017

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín and Councilmembers Sophie Hahn, Cheryl Davila, and Kate Harrison

Subject: Amending City of Refuge Policy Regarding Procedures during ICE Interaction

RECOMMENDATION

Adopt a Resolution amending the City of Refuge policy (Resolution 63,711-N.S.) specifying procedures regarding staff interaction with U.S. Immigration and Customs Enforcement related to enforcement of federal immigration law.

BACKGROUND

The residents of Berkeley have a long history and deep commitment to welcoming immigrants, refugees, and those in exile. In 1971, the City Council declared Berkeley to be a City of Refuge, and reaffirmed their decision in 1986 relating to Central American refugees, in 2007 after U.S. Immigration and Customs Enforcement (ICE) raids took place throughout the Bay Area, and again in 2016 after the election of Donald Trump.

In early 2017, the Mayor convened a Sanctuary City Task Force, bringing immigration and civil rights groups, faith leaders, legal experts, BUSD and university officials, and community activists together to discuss ways to implement our City of Refuge policy, and provide resources to support our undocumented community in the face of escalating enforcement by the federal government.

Over the past several months, the Task Force and working groups have developed resources and protocols to clarify the rights of undocumented individuals and city/community partners in the case of ICE enforcement activity. The Berkeley School Board in December passed a sanctuary campus policy which clearly articulated restrictions on information sharing, limits on providing access to school facilities and collaboration with immigration officials. The Director of the City of Berkeley Health, Housing and Community Services Department also provided guidance to department staff on ICE protocols. The attached resolution is based on the policies in both the School Board resolution and in the HHCS memo.

While the existing City of Refuge policy states that no city resources or employees are to enforce federal immigration law, many questions have arisen in the Task Force about what to do when ICE officials visit city offices to ask questions or to make arrests. It is important to clarify that no city services will be denied to any undocumented resident, and the procedures if ICE agents visit city facilities or engage with city staff.

Amending the City of Refuge Resolution by adding existing City of Berkeley protocols on ICE interaction makes explicit our commitment to providing protections for all of our community members to the furthest extent of the law.

ENVIRONMENTAL SUSTAINABILITY

No identifiable environmental effects.

FINANCIAL IMPLICATIONS

Staff time to implement new procedures regarding ICE interaction.

CONTACT PERSON

Mayor Jesse Arreguin 510-981-7100

Attachments:

- 1: Resolution
- 2: Resolution 63,711-N.S. "Reaffirming Berkeley as a City of Refuge"

RESOLUTION NO. ##,###-N.S.

AMENDING CITY OF REFUGE POLICY REGARDING INTERACTION WITH U.S.
IMMIGRATION AND CUSTOMS ENFORCEMENT

WHEREAS, the residents of Berkeley have a long history and deep commitment to welcoming immigrants, refugees, and those in exile; and

WHEREAS, the Berkeley City Council declared Berkeley to be a City of Refuge in 1971 (Resolution 44,784-N.S.), reaffirmed that decision in 1986 relating to Central American refugees (Resolution 52,526-N.S.), in 2007 after ICE raids took place in Bay Area Communities (Resolution 63,711-N.S.), and again in 2016 due to increased hate crimes after the election of Donald Trump, and xenophobic rhetoric used during the campaign (Resolution 67,763-N.S.); and

WHEREAS, in early 2017, a Sanctuary City Task Force was convened, which brought immigration and civil rights groups, faith leaders, legal experts, school and university officials, and community activists together to discuss ways to strengthen our City of Refuge policy, as well as support our undocumented community members; and

WHEREAS, over the past several months, the Task Force and working groups have developed resources and protocols to clarify the rights of undocumented individuals and city/community partners in the case of ICE enforcement activity; and

WHEREAS, the Berkeley School Board in December passed a sanctuary campus policy which clearly articulated restrictions on information sharing, providing access to school facilities, and collaboration with immigration officials; and

WHEREAS; the Director of the Berkeley Health, Housing and Community Services Department also provided guidance to department staff on ICE protocols; and

WHEREAS, while the existing City of Refuge policy states that no city resources or employees are to be used to enforce federal immigration law, many questions have arisen in the Task Force about what to do when ICE officials visit city offices to ask questions or to arrest undocumented residents. It is important to clarify that no city services will be denied to any undocumented resident, and the procedures if ICE agents visit city facilities or engage with city staff; and

WHEREAS, including newly established City of Berkeley protocols on ICE interaction makes explicit our commitment to providing protections for all of our community members to the furthest extent of the law.

NOW THEREFORE, BE IT RESOLVED by the City Council that it reaffirms that the City of Berkeley is a City of Refuge and the following restrictions on the use of City funds and resources shall be applied relating to enforcement of federal immigration law:

1. No department, agency, commission, officer or employee of the City of Berkeley shall use any City funds or resources to assist in the enforcement of Federal immigration law or to gather or disseminate information on the status of individuals in the City of Berkeley unless required by law.
2. No department, agency, commission, officer or employee shall deny access to any city services or benefits to residents on the basis of their immigration status.
3. The prohibition set forth shall include but not be limited to:
 - a. Assisting or cooperating, in one's official capacity, with any Department of Homeland Security (DHS) investigation, detention, or arrest procedures, public or clandestine, relating to alleged violations of the civil provision of federal immigration law, except as required by law.
 - b. Requesting information about, or disseminating information regarding, the immigration status of any individual, except as required by law.
 - c. Including on any application, questionnaire or interview form used in relation to benefits, services or opportunities provided by the City of Berkeley any question regarding immigration status.
 - d. It is the policy of the City of Berkeley to not allow any individual or organization to enter city facilities if their presence would disrupt city operations. Because the City Council believes that ICE activities in city facilities would constitute a severe disruption to the provision of city services, any request by ICE to any City officer or employee shall be immediately forwarded to the site director/supervisor and the Department Director for review and consultation with the City Attorney to ensure the safety of city employees and residents accessing city services and compliance with applicable state and federal laws.
 - e. Except in limited circumstances where ICE agents have a valid judicial warrant, after review and consultation with the Department Director and City Attorney, city departments, agencies, commissions, officers or employees are **not required to**:
 - Cooperate with ICE agents
 - Answer ICE agents' questions
 - Comply with an ICE Administrative Warrant
 - Immediately comply with a subpoena served by ICE agents
 - Speak with ICE agents at all

City officers or employees shall not consent to a warrantless search by ICE agents of a non-public area or non-public city records.

Employees must immediately notify site director/supervisor to report the interaction or warrants served. The site director/supervisor must immediately notify the Department Director for review and consultation with the City Attorney.

- f. If any City resident has questions regarding their immigration status, City staff shall not refer them to Immigrations and Customs Enforcement or any other government agency. Instead City staff shall refer such individuals to local non-profit immigration law organizations. A list of such organizations shall be compiled and disseminated at City buildings and on the City's website. The City Manager is also encouraged to increase and enhance partnerships with community-based organizations, legal service providers, and educational institutions to provide resources for families and City residents facing deportation or other adverse immigration actions.
- g. All requests for documents by ICE to City personnel shall be immediately forwarded to the Department Director for review and consultation with the City Attorney to ensure the safety of city employees and residents, and compliance with applicable state and federal laws.

BE IT FURTHER RESOLVED that the Council shall instruct the City Clerk to transmit copies of this resolution including any future amendments thereto that shall be made, to every department, agency and commission and employee of the City of Berkeley.

REAFFIRMING BERKELEY AS A CITY OF REFUGE

WHEREAS, the Berkeley Council has found that peace is inseparable from justice, and the residents of Berkeley have welcomed to our city those who have been forced into exile and those who have come fleeing torture and death (BMC 3.68.010 E,L), and

WHEREAS, the Berkeley Council declared Berkeley to be a City of Refuge in 1971 (Resolution No 44,784-N.S.) and reaffirmed that decision in 1986 relating to Central American refugees (Resolution No. 52-596N.S.), and

WHEREAS, the recent deployment of the United States Department of Homeland Security "Operation Return to Sender", which is enforced by U.S. Immigration and Customs Enforcement (ICE) officers, demonstrate that violations of immigrants' civil rights in this country are relevant today as they were 20 years ago, and

WHEREAS, according to community and media sources, such as the Contra Costa Times and the San Francisco Chronicle there have been over 100 detentions in Contra Costa alone, and thousands of people have been detained in the Bay Area since the beginning of Operation Return to Sender as part of over 18,000 arrests nationwide; In Northern California nearly one-third of the people detained (approximately 800) have been deported from Bay Area cities like Redwood City, Richmond, San Rafael, Concord, San Mateo and San Francisco and may likely occur within Berkeley, and

WHEREAS, immigrant parents who are victims of ICE raids are being separated from their young children, or equally abhorrent, children are being incarcerated along with their parents, and

WHEREAS, communities around the Bay Area have organized responses to the ICE raids, including passage of city and county resolutions condemning the raids and calling for no cooperation between ICE officials and local police officers; These cities include: Richmond, San Francisco, San Jose and East Palo Alto, and

WHEREAS, during some of these raids, witnesses have reported that federal agents have identified themselves as local police, have forcibly entered people's homes without warrants, and have used intimidation and harassment and in a few cases, federal agents were seen in close proximity to schools; and

WHEREAS, the deportation of family enrolled in the Berkeley Unified School District has occurred and is leading to an increased climate of fear and intimidation among Latino families and students; and

WHEREAS, for decades the Berkeley community through many public organized events has demonstrated their opposition to our Federal Government's arming and support of oppressive governments throughout Central and South America who impoverish their citizens and violate their human rights, and

WHEREAS, the spirit and intent of Berkeley's refuge Resolutions would be violated if City funds, facilities or staff were utilized to assist the Federal government's inhumane immigration policies and practices.

THEREFORE, BE IT RESOLVED the Council shall affirm that the City of Berkeley is a City of Refuge and that the following restrictions on the use of City funds and resources be applied:

1. No department, agency, commission, officer or employee of the City of Berkeley shall use any City funds or resources to assist in the enforcement of Federal immigration law or to gather or disseminate information status of individuals in the city of Berkeley unless such assistance is required by federal or state statute, regulation or court decision.
2. The prohibition set forth shall include but not be limited to:
 - a. Assisting or cooperating, in one's official capacity, with any Department of Homeland Security (DHS) investigation, detention, or arrest procedures, public or clandestine, relating to alleged violations of the civil provisions of federal immigration law, except as required by federal or state statute, regulation or court decision.
 - b. Requesting information about, or disseminating information regarding, the immigration status of any individual, or conditioning the provision of services or benefits by the City of Berkeley upon immigration status, except as required by federal or state statute, regulation, City of Berkeley public assistance criteria or court decision.
 - c. Including on any application, questionnaire or interview form used in relation to benefits, services or opportunities provided by the City of Berkeley any question regarding immigration status, except as required by federal or state statute, regulation or court decision.

BE IT FURTHER RESOLVED that the Council shall instruct the City Clerk to transmit copies of this resolution including any future amendments thereto that shall be made, to every department, agency and commission and employee of the City of Berkeley.

The foregoing Resolution was adopted by the Berkeley City Council on May 22, 2007 by the following vote:


Ayes: Councilmembers Anderson, Capitelli, Maio, Moore, Olds, Spring, Worthington, Wozniak and Mayor Bates.

Noes: None.

Absent: None.



Tom Bates, Mayor

Attest: 

Pamyla Means, MMC, City Clerk

