To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Andrew Greenwood, Chief of Police

Subject: Disposition of MOU Compendium Item 3.4, regarding Berkeley Police Department interaction with US Immigration and Customs Enforcement

RECOMMENDATION
Decline to approve MOU Compendium Item 3.4 as presented to Council on July 23, 2018 and continued to the Sept. 13 meeting agenda; and request the City Manager inform Council upon implementation of a new Berkeley Police Department General Order regarding interaction with US Immigration and Customs Enforcement officials, to include incorporation of applicable state law, and to include current Council policy as specified in Berkeley City Council Resolution 68,131 NS, as passed on July 25, 2017.

FISCAL IMPACTS OF RECOMMENDATION
There are no fiscal impacts associated with this recommendation.

CURRENT SITUATION AND ITS EFFECTS
The Berkeley City Council each year reviews the MOU Compendium and either approves or disapproves the items contained therein.

In March 2018, the Police Review Commission, as part of their annual evaluation of the MOU Compendium, recommended that Council, “Approve the ICE MOU with the proviso that it be modified to reflect the following: BPD shall not provide standby security service for U.S. ICE investigations or enforcement actions or otherwise be involved in any way with facilitating or aiding in an ICE operation.” (It is understood that by “ICE MOU” the PRC was referring to MOU Compendium Item 3.4, as there is no actual Memorandum of Understanding between the Berkeley Police Department and the Immigration and Customs Enforcement agency.)

In our July 23, 2018 Council Report regarding the annual review of the MOU Compendium, we responded to the PRC’s suggestion. We reported to Council that a new Berkeley Police General Order, which is in the final stages of review, will specifically govern all aspects of immigration enforcement, and incorporate policy as set by Council Resolutions, as well as recent developments in state law. The implementation of the new general order would further result in Item 3.4 being amended, so that Item 3.4 would refer exclusively to the new policy.
Given the existence of a new General Order, the Police Department proposes that Item 3.4 not be approved, and that Council consider deleting Item 3.4 from the MOU Compendium. The MOU Compendium structure can be needlessly confusing, especially in this case, where the very title suggests that there exists an *actual* MOU, and that is *not* the case.

By implementing a General Order specifically addressing the Department’s policy with regards to Police Department staff’s interactions with ICE, the Department intends to implement a single source of policy information for employees and for the public. By declining to approve Item 3.4 from the MOU Compendium, redundant policy language will be eliminated, while transparency will be served through inclusion of all relevant policy in one document, the Police Department General Order.

**BACKGROUND**

The City of Berkeley has a long history and deep commitment to welcoming immigrants, refugees, and those in exile. Most recently, in 2007, 2016, and 2017, City Council reaffirmed this commitment through a series of Council Resolutions.

The Berkeley Police Department maintains a compendium of agreements and understandings between the Berkeley Police Department and other local, state and federal law enforcement agencies. Since April 2010, the MOU Compendium has included Item 3.4, “Federal: Department of Homeland Security, US Immigrations and Customs Enforcement (USICE)”. Item 3.4’s narrative briefly describes the City’s older legislative actions from 1971 under Council Resolution 44,784 NS, and 2007, under Council Resolution 63,711. The Item also briefly describes when the Police Department may interact with ICE. The Item included for reference a 2008 email from Chief Hambleton to BPD staff, and the 2007 Council Resolution 63,711 NS.

**ENVIRONMENTAL SUSTAINABILITY**

Not applicable.

**RATIONALE FOR RECOMMENDATION**

The recommendation is intended to increase clarity and decrease potential confusion by removing Item 3.4 from the MOU Compendium, while ensuring Council is made aware of the implementation of a new General Order governing the interaction between the Berkeley Police Department and officials from the Immigration and Customs Enforcement agency. The new General Order will specifically incorporate Council policy as well as new state law requirements. The General Order would be the sole policy document, as the Item 3.4 cover page (and its narrative language) would be deleted from the MOU Compendium.
Disposition of MOU Compendium Item 3.4, regarding Berkeley Police Department interaction with US Immigration and Customs Enforcement Officials

ACTION CALENDAR
September 13, 2018

ALTERNATIVE ACTIONS CONSIDERED
Council could choose to approve Item 3.4 as originally described in the July 23 Council Item. The Item cover page would be redrafted to direct the reader to the new General Order.

Council could take no action. Absent approval, Item 3.4 will be removed from the MOU compendium. The Police Department would implement the new General Order.

CONTACT PERSON
Andrew Greenwood, Chief, Berkeley Police Department, 510 981-5900

Attachments:
1: Existing Item 3.4 Summary Page from MOU Compendium
### CITY COUNCIL REVIEW / APPROVAL BINDER

BERKELEY POLICE DEPARTMENT AGREEMENTS, LETTERS AND UNDERSTANDINGS RE: MUTUAL AID, INFORMATION SHARING AND COOPERATION WITH OTHER LAW ENFORCEMENT, MILITARY ENTITIES, AND PRIVATE SECURITY ORGANIZATIONS

(Berkeley Municipal Code §2.04)

<table>
<thead>
<tr>
<th>Item #</th>
<th>3.4</th>
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<tbody>
<tr>
<td><strong>Title:</strong></td>
<td>FEDERAL: DEPARTMENT OF HOMELAND SECURITY, U.S. IMMIGRATIONS AND CUSTOMS ENFORCEMENT (USICE)</td>
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<td><strong>Type:</strong></td>
<td>General understanding, local ordinance prohibitions</td>
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<td><strong>Approvals:</strong></td>
<td>Initial: April 20, 2010 / Current: March 14, 2017</td>
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- The USICE enforces federal immigration and customs-related laws. They assist State and local law enforcement in the location of non-citizen violent offenders who have fled the United States to evade arrest and prosecution.

- Council Resolution No 44,784-NS (1971) designated Berkeley as a City of Refuge. Resolution No 63,711 reaffirmed this designation in 2007. The 2007 Resolution prohibits the use of City resources in support of USICE immigration investigations, and precludes the inquiry or sharing of a person's immigration status.

- With regard to the prohibitions of Resolution No 63,711, the Police Department may request investigative assistance from USICE to support state and local criminal investigations. The Police Department may, upon USICE request, provide "professional courtesy" stand-by security service at the location of a USICE investigation for the sole purpose of ensuring public and officer safety. Police Department will provide emergency life-safety assistance, and may investigate State/local crimes (e.g. an officer involved shooting) occurring in association with a USICE operation. No other administrative, logistical, or enforcement service is provided in support of a USICE immigration investigation/enforcement action.

- Chief Hambleton codified these directives in Department policy via written communication to management staff on January 30, 2008.

- **Rationale:** Within the structure of local Resolution, maintaining a relationship with USICE is appropriate when investigating non-immigration local criminal cases in which the suspect is a non-citizen.
| **Cost:** | If Approved: Cost will be neutral. Approval will continue to support current law enforcement activity, funded in existing budget.  
If Not Approved: Effect on cost cannot be calculated. Reduced cooperation would increase the burden of enforcement and related activity; costs would be borne by the Police Department |
| **Recommendation:** | Continued approval |