

To: Honorable Mayor and  
Members of the Berkeley  
City Council

From: Councilmembers Dona Spring and Kriss Worthington

Subject: City Refuge Ordinance to Prevent Co-operation with  
Immigration Raids

Recommendation:

that the Council approved in concept to the attached resolution passed by the Peace and Justice Commission and refer it to the City Attorney to draft as an ordinance; and request the City Manager to instruct staff to not participate the immigration raids in any manner.

Background:

This resolution was approved by the Peace and Justice Commission at its May meeting. Recent immigration raids in the East Bay have disrupted families and communities. Sometimes citizens have been detained. These activities are traumatic. Mayors and Councilmembers of other jurisdictions have made it clear there will not be local cooperation with the raids.

On March 13, 2007 Council officially condemned the raids. At this point it is important to join other jurisdictions in insuring that local officials do not facilitate the raids. Residents deserve this protection.

## INTRODUCTION

### **BERKELEY CITY OF REFUGE ORDINANCE**

The City of Berkeley has long been on record and has passed several resolutions declaring itself to be a sanctuary and refuge for those who flee oppression and rights abuses by their home country's government. Recently, the Federal government has escalated immigrant enforcement actions across the country under the name Return

To Sender. incurring over 13,000 arrests with over 100 in Contra Costa County, 800 in Northern California and local cities Redwood City, Richmond, San Raphael, Concord, San Mateo, and San Francisco. The families of Berkeley Unified School District students have been deported. Witnesses have reported that Federal agents have identified themselves as local police personnel, have forcibly entered peoples' homes without warrants and have used intimidation and harassment. Federal agents were seen in close proximity to schools, and have created a climate of intimidation and fear in the immigrant/minority communities.

Nationwide, over 58 initiatives across 21 states condemning the raids and pledging non-cooperation and have been passed by city and county governments including local cities like Richmond, San Francisco, East Palo Alto, San Jose and recently Oakland. City government and police officials mirror the comments of the

Los Angeles mayor and police chief who complained that the raids were damaging the rapport between the city and the immigrant/minority communities. This relationship is believed to be vital in important civic programs involving community policing, health, schools and others.

The Federal government wants to pass some of the costs of these actions onto the local governments including those that are in opposition to them. Any city, town or county has the right to declare what priorities it wishes to expend their resources on.

For decades the Berkeley community through many public organized events has demonstrated their opposition to the Federal government's arming and support of oppressive governments throughout Central and South America who impoverish their citizens and violate their human rights. To the extent that it is legally possible, the City of Berkeley should prohibit any city aid or cooperation with the draconian and inhumane attempts by the Federal government to terrorize Berkeley's immigrant/minority communities.

## **BERKELEY CITY OF REFUGE DRAFT ORDINANCE**

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 has already declared that Berkeley is 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.), but has not joined other cities like San Francisco which has formalized these resolutions as part of the municipal code, and

WHEREAS, the Federal government has escalated a program of fear and intimidation against the immigrant/minority communities named “Return to Sender”, and

WHEREAS, over 58 such initiatives condemning the raids and pledging non-cooperation have been promulgated in 21 states across the country including the Bay Area cities Richmond, San Francisco, San Jose and East Palo Alto, Oakland 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,

WHEREAS, it is the right of any city, town or county to declare what preferences, policies and priorities they wish to expend their resources on,

WHEREAS, the extreme actions by the Federal government against the immigrant communities are violations of the International Covenant on Civil and Political Rights (articles 2.1, 23 and 24) and the Covenant Against Torture and the Covenant against Inhuman or Degrading Treatment or Punishment and the Convention on Elimination of all forms Racial Discrimination, all of which are treaties ratified by the Federal Government which under the U.S. Constitution (article 6 clause 2) represent the supreme law of the land.

THEREFORE BE IT RESOLVED, the Council shall affirm that the City of Berkeley is a City of Refuge and establish such as a part of the Berkeley Municipal Code.

THEREFORE BE IT RESOLVED, the Council shall adopt the following restrictions on the use of City funds and resources;

- a) 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. The prohibition set forth in this chapter shall include but not be limited to:

- 1) 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.
- 2) 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.
- 3) 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.

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

FURTHER BE IT RESOLVED that [the appropriate city commission or body] shall review the compliance of the City departments, agencies, commissions and employees with the mandates of this ordinance in particular instances in which there is question of noncompliance or when a complaint alleging noncompliance has been lodged.

FURTHER BE IT RESOLVED that if any part of this ordinance, or the application thereof is held to be invalid, the remainder of this ordinance shall not be affected thereby, and this ordinance shall otherwise continue in full force and effect. To this end, the provisions of this ordinance, and each of them, are severable.

FURTHER BE IT RESOLVED that any agent, representative or employee of the City of Berkeley who is contacted by any agent, representative or employee of the State or Federal government for the purposes of obtaining information, advice, assistance, or use of any City of Berkeley utilized facility or any other type of cooperation as preparation or part of enforcement of immigration laws shall report such contact within 24 hours to the person(s) who heads, manages or is responsible for their department, agency or division who then within 24 hours shall transmit all relevant information regarding the contact to

the office of the City Manager. The report must include the time of the contact, the nature of the contact as to whether any type of assistance, advice, information, cooperation or use of any City of Berkeley utilized facility was requested and whether any information, assistance, advice, cooperation or facility use was provided. The City Manager shall within 24 hours post all relevant information of the contact onto the City of Berkeley website in such a way as to fully inform the citizens of Berkeley. The posting shall include the time, the nature of the contact and whether any information, assistance, advice, cooperation or use of any City of Berkeley utilized facility was requested and whether any was provided.