City of Brisbane
Agenda Report

Meeting: May 18, 2017
To: Honorable Mayor and Members of the City Council
From: Michael Roush, City Attorney
Subject: Information Report Concerning Sanctuary City Policies

Background

A number of jurisdictions, including cities in San Mateo County, have adopted what are called "sanctuary city" policies. These range from resolutions that place limits on the assistance such jurisdictions will provide to federal authorities seeking to apprehend and deport undocumented immigrants to resolutions that indicate the jurisdiction's commitment to safeguard the civil rights, safety and dignity of all members of the community (see the resolutions adopted by the Belmont City Council [Attachment 1], San Carlos City Council [Attachment 2], and San Mateo City Council [Attachment 3]). . Recently, the Mayor received a request from a resident requesting that Brisbane also consider adopting a policy to reflect the City's values as to this issue. Accordingly, this item has been placed on the Council agenda for information and discussion purposes only.

Sanctuary Cities Generally

The term "sanctuary city" is not defined by federal law, but it is often used to refer to those local entities which place limits on their assistance to federal immigration authorities seeking to apprehend and remove undocumented immigrants. Supporters of such policies argue that cities have local obligations, and that diverting local resources to support the enforcement of federal programs designed to deter or discourage unauthorized immigration would undermine community relations, disrupt municipal services, interfere with local law enforcement, or violate humanitarian principles. Opponents argue that local jurisdictions which refuse to support federal immigration policy are encouraging illegal immigration and are undermining federal enforcement efforts.

The federal government has the exclusive authority to enforce the civil provisions of federal immigration law relating to issues such as admission, exclusion, and deportation. The federal government can permit but not require the assistance of local officials. In 1996, the federal government enacted two pieces of legislation which prohibit state or local governments from restricting voluntary communication with the federal government regarding the immigration status of any individual: § 434 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA, 8 U.S.C. § 1644) and § 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA, 8 U.S.C. § 1373). Both pieces of legislation were designed to authorize communication by state and local law enforcement agencies with federal immigration authorities regarding the status and presence of undocumented immigrants. While neither of these statutes requires local cooperation or information sharing with federal immigration authorities, both prohibit a policy which directly prohibits the voluntary sharing of information once it is acquired.

These federal statutes have been used to both challenge and support state and local involvement in federal immigration law enforcement. Proponents of state and local involvement have argued that these provisions were intended to maximize cooperation among federal, state, and local law enforcement

agencies in enforcing federal immigration laws. Opponents of local involvement in federal immigration policy have argued that these provisions prohibit state and local enforcement and interference. While many state and local jurisdictions throughout the United States have adopted laws or polices that limit their own jurisdictions' federal civil immigration law enforcement efforts, the federal government has not made a formal legal determination as to whether those state and local laws or policies violate these provisions. Some jurisdictions with "sanctuary" policies do restrict staff from making inquiries about a person's immigration status in certain circumstances. Though commentators have suggested that this method does not directly conflict with federal requirements that states and localities permit the free exchange of information regarding persons' immigration status, the practice results in specified agencies or officers lacking information that they could potentially share with federal immigration authorities.

The "sanctuary city" movement is a recognition that the U.S. Customs and Immigration Enforcement, known as ICE, does not have the staffing for nationwide immigration enforcement. ICE relies upon local law enforcement to arrest and detain undocumented individuals. Refusing to do so effectively limits but does not prevent the federal government's ability to enforce federal immigration laws.

President Trump's Executive Order and Litigation Challenging That Order

President Trump has expressed his opposition to "sanctuary policies" and "sanctuary cities". The President has issued an executive order to cancel all federal funding to jurisdictions that support "sanctuary city" policies by refusing willingly to comply with federal law about sharing a person's immigration status with the federal government. In response to this action, local officials in more than ten major cities, including San Francisco, Oakland, Los Angeles, New York, Chicago, and Washington, D.C., reaffirmed their commitment to upholding their status as "sanctuary cities", even in the face of federal threats. Moreover, the City and County of San Francisco and the County of Santa Clara filed suit to block the executive order. In late April, a federal judge issued a nationwide preliminary injunction enjoining the enforcement of the executive order. The court determined the executive order was causing harm by creating budget uncertainty by threatening the loss of significant federal funding and violated the separation of powers doctrine, i.e., the Constitution vests spending powers in the Congress, not the President.

Impact on the Day to Day Operations of the Brisbane Police Department

Regardless of whether a sanctuary city or some other similar policy was adopted by the Council, the Police Chief is of the opinion that it would not change how the Department performs its job. The Department prides itself on the partnerships it has fostered with those who live and work in the community and it has worked hard to build trust and respect within the community, regardless of the person's immigration status. Accordingly, persons who live or work in the community are comfortable reporting criminal activity to the Department without fear that they could be reported to immigration officials.

Of course, the Department will continue to enforce criminal laws but it has not been, nor is, the policy of the Department to inquire about, investigate or report to any federal immigration agency an individual's immigration status. As to persons arrested, the responsibility concerning immigration status rests with the San Mateo County Sheriff's office, although our understanding is that the Sheriff no longer detains individuals for federal immigration officials unless the individuals pose a significant public safety risk under California law.

Fiscal Impact

If the City were to adopt a far reaching sanctuary city policy similar to that adopted by San Francisco and if the executive order is upheld, the City currently does not receive any specific federal funding that

would be in jeopardy. Periodically, there are some federal grants for which the City may not therefore be eligible but the amounts of those grants have not been critical to the City's economic well-being.

Next Steps

If the City Council concludes that it would like to consider this issue further, staff will return the item to the Council with various policy options, ranging from a strong sanctuary city policy such as that adopted by San Francisco to a policy similar to that adopted in other San Mateo County cities such as the City of Belmont, City of San Carlos and City of San Mateo.

Michael Roush
City Attorney

Clay Holstine
City Manager

Attachment 1: Civil Rights Resolution adopted by the Belmont City Council
Attachment 2: Welcoming City Resolution adopted by San Carlos City Council
Attachment 3: Supporting All Community Members Resolution adopted by San Mateo City Council

ATTACHMENT 1: CITY OF BELMONT

RESOLUTION NO. 2017-027

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELMONT AFFIRMING THE CITY'S COMMITMENT TO SAFEGUARD THE CIVIL RIGHTS, SAFETY, AND DIGNITY OF ALL COMMUNITY MEMBERS

WHEREAS, the City of Belmont is made up of individuals, both native born and immigrants, whose collective cultures, religions, backgrounds, orientations, abilities, and viewpoints join to form a healthy community that prides itself on being a place that welcomes persons and families of all walks of life regardless of how long they have lived here or where they came from; and

WHEREAS, there has been a sense of uncertainty and fear among communities in Belmont and across our State and the Nation due to the recent change of national policies; and

WHEREAS, the City wants to reassure its residents and visitors that Belmont is a place that celebrates diversity and inclusion; and

WHEREAS, the City will not tolerate any prejudice, racism, bigotry, hatred, bullying, or violence towards any groups within our community; and

WHEREAS, the City rejects any attempt to intimidate, threaten, or otherwise marginalize members of our community; and

WHEREAS, the City Council wishes to declare that Belmont is a safe place for everyone, including vulnerable communities regardless of race, ethnicity, gender identity, sexual orientation, religion, socioeconomic status, or country of origin; and

WHEREAS, the City assures its vulnerable communities that the City supports them, will do all it can to maintain and improve their quality of life, and will not tolerate acts of hate-based discrimination, bullying, or assault; and

WHEREAS, it is the City Council's desire to ensure that all residents, regardless of country of origin, participate in civic life and daily activities without fear of being arrested or detained based solely on immigration status; and

WHEREAS, the City of Belmont is, and has been, well served by a professional Police Department with a history of protecting and respecting the rights of all people while working diligently to keep Belmont safe; and

WHEREAS, the enforcement of civil immigration laws is not the duty of the Belmont Police Department and can run the risk of potentially undermining the trust and cooperation it has established with immigrant communities, as well as distracting from the core mission of the Belmont Police Department to keep Belmont, its residents, its businesses, and its visitors safe; and

WHEREAS, the City wishes to foster trust and cooperation between the City and its immigrant communities and encourages all people to report crime and speak to the police without fear of being arrested, detained, or reported to the Federal Government based on their immigration status; and

WHEREAS, the City values its long-standing relationship with students and all youth and wishes to encourage a sense of safety and support among all of our young people; and

WHEREAS, the City encourages all residents and visitors in Belmont to celebrate each other's differences and learn from one another.

NOW, THEREFORE, the City Council of the City of Belmont resolves as follows:

Section 1. The Belmont City Council calls upon all City Departments and employees and all who live, work, or visit in Belmont to speak out against acts of bullying, discrimination, and hate violence and to stand up for those who are targeted for such acts.

Section 2. The Belmont City Council opposes deportations based solely on immigration status, which tear apart families and communities, and calls upon the Federal Government to promptly legislate a pathway to citizenship for undocumented immigrants.

Section 3. City employees, including members of the Belmont Police Department, do not investigate, question, detect, detain, or apprehend persons solely on the basis of a possible violation of immigration law.

Section 4. The Belmont City Council will lead by example in promoting safety, security, and respect for human and constitutional rights, and welcomes opportunities to partner with the Legislature, other jurisdictions, local organizations, educational institutions, residents, and businesses that support and defend all individuals in Belmont.

Section 5. The City recognizes, values, and will proactively work to promote diversity and inclusion within Belmont.

Section 6. The City will protect the rights and privileges of everyone in Belmont, regardless of religion, race, ethnicity, country of birth, immigration status, disability, gender, sexual orientation, or gender identity.

Section 7. The City does not tolerate discrimination, harassment, or any hate-based crimes.

Section 8. The City hereby rejects prejudice and bigotry in all forms, including but not limited to anti-Semitism, genderphobia, homophobia, Islamophobia, misogyny, nativism, racism, and xenophobia.

* * *

ADOPTED March 28, 2017, by the City of Belmont City Council by the following vote:

Ayes: Hurt, Kim, Reed, Lieberman, Stone

ATTEST:

_____
City Clerk

_____
Mayor

APPROVED AS TO FORM:

_____
City Attorney

Attachment 2: City of San Carlos

RESOLUTION NO. 2017-____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CARLOS RE-AFFIRMING SAN CARLOS' COMMITMENT TO A DIVERSE, SUPPORTIVE, INCLUSIVE AND PROTECTIVE COMMUNITY AND DECLARING SAN CARLOS A "WELCOMING CITY".

WHEREAS, in its most recent Strategic Plan, the City Council included as one of its core values the following text: the City of San Carlos values a safe, diverse and welcoming community; and

WHEREAS, the City prides itself on being The City of Good Living and all residents can expect the City to strive to maintain this standard; and

WHEREAS, since the new Administration took over in January, community members have expressed concern that a recent national rise in hateful rhetoric, racism and bigotry is impacting all communities, including San Carlos; and

WHEREAS, many cities throughout the Country are issuing statements of support for all of its citizens, particularly immigrants, LGBT, women, religious groups, members of political groups, disabled persons, and minorities who are feeling threatened by the policies and actions at the national level and in certain states; and

WHEREAS, a group of concerned citizens asked the City Council to pass a resolution in support of all peaceful people, which the City Council requested staff to agendize.

NOW, THEREFORE BE IT RESOLVED that the City Council of the City of San Carlos hereby joins in solidarity with other likeminded communities across the United States and around the world in supporting, accepting, declaring integral to the fabric of our community, and welcoming all peaceful people, regardless of race, ethnicity, religion, gender, national origin, disability, political affiliation, sexual orientation, or gender identity.

RESOLVED that the City will strive to: promote understanding, dialog and acceptance among all residents; actively denounce any attempt to intimidate, threaten, or otherwise marginalize members of our community based on the classes listed above; and communicate and practice zero tolerance of prejudice, racism, bigotry, hatred, bullying and violence.

RESOLVED that the City will actively pursue policies that promote trust, goodwill and cooperation between residents, law enforcement, City staff and officials, and will speak and act with respect for all persons.

RESOLVED that the City believes in the nation's founding principle of religious freedom, and that no resident should be subjected to anything that may be defined as a religious test.

RESOLVED that the City supports the San Mateo County Sheriff's Office and its Policy on Immigration Enforcement to not directly investigate or enforce immigration laws.

RESOLVED that the federal government cannot commandeer the government of the City of San Carlos to do its work.

RESOLVED that City resources are limited, and should only be used in service of the goals and values of the City of San Carlos.

RESOLVED that the City of San Carlos requests San Mateo County and the San Mateo County Sherriff's Office not communicate and coordinate operations with Immigrations and Customs Enforcement (ICE) except in matters related to criminal conduct.

RESOLVED that the City Council of the City of San Carlos hereby directs that no city commission or employee shall use any city funds and/or resources to assist any government agency:

(a) in compelling a resident of San Carlos to identify their religious beliefs, race, nation of descent, documented status, disability, political affiliation, sexual orientation or gender identity for the purpose of providing information to a national registry or database;

(b) in any investigation or with the gathering and dissemination of information regarding the religious beliefs, race, nation of descent, documented status, disability, political affiliation, sexual orientation, or gender identity of any resident in the City of San Carlos, for the purpose of providing information to a national registry or database;

(c) with the detention, relocation, or internment of a resident of the City of San Carlos based solely upon their religious beliefs, race, nation of descent, disability, political affiliation, sexual orientation, gender identity and/or documented status;

(d) absent a court order, with soliciting, collecting or disseminating data that might be made accessible to Immigration and Customs Enforcement, or other federal agencies for the purposes of enforcing immigration/deportation actions.

* * * * * * * *

I, Crystal Mui, hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the City of San Carlos at a scheduled meeting thereof held on the 13th day of March, 2017 by the following vote:

AYES, COUNCILMEMBERS: _____

NOES, COUNCILMEMBERS: _____

ABSENT, COUNCILMEMBERS: _____

APPROVED:

_____
CITY CLERK of the City of San Carlos

_____
MAYOR of the City of San Carlos

ATTACHMENT 3: CITY OF SAN MATEO

CITY OF SAN MATEO
RESOLUTION NO._____(2017)

AFFIRMING THE CITY OF SAN MATEO'S COMMITMENT TO SUPPORT AND INCLUDE ALL COMMUNITY MEMBERS, REGARDLESS OF ETHNIC OR NATIONAL ORIGIN, GENDER, RACE, RELIGION, SEXUAL ORIENTATION, OR IMMIGRATION STATUS

WHEREAS, analysis of the U.S. Census Bureau's data performed by the Migration Policy Institute estimates that 57,000 residents of San Mateo County are undocumented; and

WHEREAS, the American Community Survey reports that 34% of the City of San Mateo's residents are foreign born and approximately half of the foreign-born residents are non-citizens; and

WHEREAS, an estimated 6,000 undocumented children are enrolled in schools throughout San Mateo County and there are an estimated 14,000 individuals living in our County who have qualified under the Deferred Action for Childhood Arrivals; and

WHEREAS, the City of San Mateo seeks to promote and enhance the health, safety and welfare of the community and provide and ensure access to quality services for all its residents on an equitable basis, irrespective of immigration status; and

WHEREAS, it is the policy of the City of San Mateo to respect and support every resident of the community in all matters related to civic life irrespective of ethnic or national origin, race, gender, religion, sexual orientation, economic or immigration status; and

WHEREAS, as a statement of policy the City Council wishes to express its repudiation of bigotry in all its forms, including, but not limited to Islamophobia, anti-Semitism, racism, nativism, misogyny, and homophobia; and

WHEREAS, the City Council and the City of San Mateo do not tolerate discrimination, hate crimes, harassment, or assault; and

WHEREAS, recent immigration-related actions and proposals by the federal government have created concerns and fears among residents of the City of San Mateo and San Mateo County regarding personal freedom, civil rights, and the treatment of immigrants; and

WHEREAS, the City Council is committed to upholding the Constitution and the traditions of law and due process embodied in it which allow all residents to live free of harassment, discrimination, persecution, harassment and assault; and

WHEREAS, in order for the City of San Mateo to effectively deliver essential services that promote a safe quality of life, it must be made clear to the community that the enforcement of federal immigration law is the responsibility of federal authorities; and

WHEREAS, the City of San Mateo will continue to serve as a model of inclusion and equity for all of its residents, including immigrants, refugees and other newcomers who choose to make this city their home.

NOW, THEREFORE, THE SAN MATEO CITY COUNCIL HEREBY RESOLVES that The City Council of San Mateo affirms its commitment to support and respect its diverse community and stands with the Board of Supervisors of San Mateo County in upholding the following principles in furtherance of this Resolution:

1. The City of San Mateo recognizes, values, and will continue to protect the rights of all residents, irrespective of their ethnic or national origin, gender, race, religion, sexual orientation, economic or immigration status.

2. Enforcement of federal immigration law is the responsibility of the federal government. Neither the City of San Mateo nor any employee of the City shall perform the functions of a federal immigration officer.

3. With respect to law enforcement activities, neither the City of San Mateo nor any employee of the City shall inquire about the immigration status of an individual, including but not limited to a crime victim, witness, or a person who calls or approaches law enforcement personnel seeking assistance, unless necessary to investigate criminal activity by such an individual.

4. The City of San Mateo recognizes the importance of public safety for its residents, and to that end, City employees, including law enforcement officers, will provide appropriate cooperation with Federal immigration agencies in matters involving criminal activity and the protection of public safety.

5. It must remain a clear statement of City policy that residents of San Mateo can access the full range of services to which they are entitled, including safety net services and law enforcement protection, without fear that the City will use information solicited in such encounters to support immigration enforcement activities. The City of San Mateo will only collect information from individuals regarding citizenship or immigration status to the extent necessary to perform City business activities or as otherwise required by law. It shall be the policy of the City of San Mateo to prohibit the use or disclosure of such information in any manner that violates federal, state or local laws. Further, the City shall disclose non-public information in its possession about individuals only to the extent required by law or for matters involving criminal activity or public safety.

6. No City resources will be expended to develop or to assist any other public agency in developing or implementing a program to establish a registry or database of personal information related to individual residents on the basis of race, gender, sexual orientation, religion, ethnicity, national origin, or immigration status.

7. The City of San Mateo and the City Council will, to the fullest extent possible under the law, oppose all attempts to undermine the safety, security, and rights of residents and the

City Manager is hereby directed to work with staff to develop and provide for Council consideration and approval, as necessary, appropriate steps to implement the intent of this resolution.

8. Nothing in this Resolution shall be construed or implemented in such a manner as to conflict with any obligation imposed by federal law or the conditions of any federal funding.

9. The City Manager shall work with staff to monitor all efforts by the federal government to rescind, withhold or withdraw federal funding as a result of the measures set forth in this Resolution or other similar actions.