Response to Critical Amendments Requested by Albany Community Action

Item A. City Council Resolution Language (item #2): In accordance with current State and Federal law, City of Albany officials, including its police officers, shall not actively collaborate with federal agents solely for the purpose of enforcing federal immigration law and shall not use City resources or personnel to investigate, question, detain apprehend, and/or register persons based solely on a civil violation of federal immigration law.

ACA request 1 – “Add to item #2: City of Albany officials and employees shall not provide federal immigration agencies with access to individuals in their custody for questioning solely for immigration enforcement purposes.”

Response: Suggest adopting ACLU model policy language instead of either of the above.

ACLU Defined Access/Interview Rule: Unless acting pursuant to a court order or a legitimate law enforcement purpose that is unrelated to the enforcement of a civil immigration law, no [County/City/State] official shall permit ICE or CBP agents access to [County/City/State] facilities or any person in [County/City/State] custody for investigative interviews or other investigative purposes.

Discussion: The ACLU model policy language succinctly accomplishes the intended goal, that is, to deny ICE access to persons in custody for the purpose of enforcing civil immigration law. By adopting the ACLU language, we are positioning ourselves to craft a resolution with language that is consistent with like-minded municipalities nationwide.

Item B. ACA request 2 – “Add to item #2: Absent a judicial warrant or court order, City of Albany officials, employees, and agents shall not honor requests for non-public, sensitive information about individuals.”

Response: Suggest adopting ACLU model policy language instead of either of the above.

ACLU Privacy Protection Rule: “No [County/City/State] official shall voluntarily release personally identifiable data or information to ICE or CBP regarding an inmate’s custody status, release date or home address, or information that may be used to ascertain an individual’s religion, ethnicity or race, unless for a law enforcement purpose unrelated to the enforcement of a civil immigration law.”

Discussion: The language proposed by ACA is too broad and would prohibit disclosure and exchange of information necessary to the function of City business.

The ACLU model policy language succinctly accomplishes the intended goal, that is, to deny ICE or CBP access to personally identifiable data or information for the purpose of enforcing civil
immigration law. By adopting the ACLU language, we are positioning ourselves to craft a resolution with language that is consistent with like-minded municipalities nationwide.

**Item C. City Council Resolution Language (item #4):** City of Albany officials will not use any public resources to participate in any federal program requiring the registration of individuals on the basis of religious affiliation, race, national or ethnic origin, gender, gender identity or sexual orientation if such registration contains any information that may reveal the identity of an individual.

**ACA request 3 — “Modify item #4: Remove clause & add language at the end:** City of Albany officials will not use any public resources to participate in any federal program requiring the registration of individuals on the basis of religious affiliation, race, national or ethnic origin, gender, gender identity or sexual orientation if such registration contains information that may reveal the identity of an individual [and Add: or membership in other vulnerable populations, except as required to provide services to or respond to attacks targeting vulnerable populations.”

**Response:** Suggest adopting hybrid City of Fremont policy language instead of either of the above.

Hybrid language: The City of Albany opposes any unconstitutional ethnicity tests for immigration and any unconstitutional data collection action of the Federal Government (such as requiring the registration of individuals on the basis of religious affiliation, race, national or ethnic origin, gender, gender identity or sexual orientation).

**Discussion:** The language proposed by ACA is too vague, specifically, “registration” and “other vulnerable populations” would have to be defined. Using the phrase “vulnerable populations” is problematic in policy. Initial concern with broad language included the reporting requirements for Hate Crimes (which we report (register) monthly with our crime reports to the FBI that may include age, sex, race, or in the case of hate crimes, gender, religious affiliation, ethnicity, national origin, disability, sexual orientation, etc. Also, the issue of whether or not Passport processing is participation in a federal program requiring recordation and “registration of “prohibited” data sets (race, national origin, etc.).

**Item D. ACA Request 4 – “Add new item:** City of Albany officials, employees and agents will not inquire into, record, or disclose the immigration status of individuals in either the provision of municipal services or in the course of law enforcement.”

**Response:** Suggest adopting ACLU model policy language instead of the above.

ACLU Don’t Ask Rule: [County/City/State] officials shall not inquire into the immigration or citizenship status of an individual, except where the inquiry relates to a legitimate law enforcement purpose that is unrelated to the enforcement of a civil immigration law, or where
required by state or federal law to verify eligibility for a benefit, service, or license conditioned on verification of status.

Discussion: The language proposed by ACA is too broad and would prohibit disclosure and exchange of information necessary to the function of City business. For example, this language would prohibit the collection, recordation and disclosure of immigration status necessary for the processing of passport applications. Likewise, providing other administrative municipal services, such as issuance of letters of good conduct (also known as clearance letters) which may be needed to assist with foreign travel, adoption, student visas, replacement of Permanent Resident Cards, and citizenship through naturalization.

As written, the proposed language may also violate 8 USC § 1373, which prohibits local government entities or officials from prohibiting, or in any way restricting, “any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

The ACLU model policy language succinctly accomplishes the intended goal, that is, to limit unnecessarily intrusive City inquiries into immigration or citizenship status for the purpose of enforcement of civil immigration law without running afoul of long standing federal statutes. By adopting the ACLU language, we are positioning ourselves to craft a resolution with language that is consistent with like-minded municipalities nationwide.

**Item E.**

ACA Request 5 – “Add new item: The City Manager shall report to the City Council requests of mandates from the federal government for use of City resources to enforce federal immigration laws.” NOTE: The language of the ACA request appears to be copied from San Leandro’s similar resolution with a possible typo (San Leandro declaration states “requests or mandates”).

Response: Incorporate correct language into City Council resolution and include this mandate in the City of Albany Administrative Procedures Manual.

Discussion:

A request to use City resources to enforce federal immigration laws would be so extraordinary, it would likely trigger a notification of City Council regardless of policy, however, in the pursuit of developing resolute policies that will prevail through changes in personnel over time, the recommendation to adopt/incorporate the proposed language is made.

As a matter of information, the TRUTH Act (CA Government Code §7283.1) requires: “Beginning January 1, 2018, the local governing body of any county, city, or city and county in which a local law enforcement agency has provided ICE access to an individual during the last year shall hold at least one community forum during the following year, that is open to the public, in an accessible location, and with at least 30 days’ notice to provide information to the public about
ICE’s access to individuals and to receive and consider public comment. As part of this forum, the local law enforcement agency may provide the governing body with data it maintains regarding the number and demographic characteristics of individuals to whom the agency has provided ICE access, the date ICE access was provided, and whether the ICE access was provided through a hold, transfer, or notification request or through other means. Data may be provided in the form of statistics or, if statistics are not maintained, individual records, provided that personally identifiable information shall be redacted.”

Although this new law will daylight some local law enforcement interaction with ICE, the ACA suggested language will ensure any requests or mandates from the federal government for use of City resources to enforce federal immigration laws will be reported to City Council.

Item F. **ACA Request 6 – Add new item:** “The city will develop a policy to govern the documentation, reporting, and public communication about incidents of hateful speech and acts, even where they do not meet the legal definition of a hate crime.”

Response: This is very broad language and would likely include constitutionally protected activity (e.g., posting hate/offensive material on your own private property, distributing hate literature in a public park, and posting hate material to various social media platforms).

Discussion: Hate crimes as specified in California Penal Code §422.6 are reported monthly to the CA Department of Justice and published annually in the FBI Uniform Crime Report. This data is public and searchable going back several years. If something doesn’t meet the definition of a hate crime, what definition do we use to identify legal speech and acts that shall be publicly reported? How would we report this to the public? Police, or government reporting on constitutionally protected activity is potentially unlawful. An additional complicating factor involves numerous privacy laws when a non-criminal, bias motivated incident takes place at a school, on private property, and or involves a juvenile.

Item G. **ACA Request 7 – “Edit throughout resolution:** “city employees and agents” in all instances that specify City officials. (Question: why were “city employees and agents” removed?)”

Response: Recommend using the phrase “city officials, employees and agents” where needed.

Discussion: The spirit of the resolution is clear and “City officials” should effectively cover all potential City actors, however, better language can easily be included without changing the intent or impact of the policy.