

DURHAM



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CITY OF MEDICINE

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October 28, 2010

TO: Mayor and City Council

CC: Thomas J. Bonfield, City Manager

FROM: Patrick W. Baker, City Attorney

SUBJECT: Resolution supporting recognition of the Matricula Consular as a valid form of identification

The attached resolution was submitted for the City's consideration by the Bill of Rights Defense Committee and the Durham Immigrant Solidarity Committee. Prior to appearing on your Council agenda, the resolution was presented to the City Attorney's office for consideration and comment. The City Attorney's office does not have an official position either for or against the adoption of this resolution. However, for the reasons stated below, this office does not object to your consideration and adoption of this Resolution as it is currently written.

The fundamental crux of this resolution is the recognition of the Matricula Consular as a valid form of identification in situations where the need to obtain personal identification by a Durham Police Officer becomes relevant. The Matricula Consular (de Alta Seguridad) is an identification card issued by the Government of Mexico through its consulate offices to Mexican citizens residing outside of Mexico regardless of their emigration status. The official purpose of the card is to demonstrate that the holder is a Mexican citizen living outside of Mexico. It includes an official Government of Mexico issued ID number and bears a photograph and address of the Mexican National to whom it is issued.

As a general rule, the City Attorney's office recommends against the adoption of any local rule or regulation that could interfere in any way, shape or form with the lawful, day to day enforcement operations of the Durham Police Department. After substantial consideration of the resolution and consultation with the Durham Police Department, this office is of the opinion that the attached resolution simply acknowledges, without codification, the present procedures of the Durham Police Department as it relates to personal identification and in particular the consideration of a valid Matricula Consular. The resolution as written does not give a valid Matricula Consular a status equal to a valid North Carolina driver's license nor will it prevent the lawful arrest of an individual under circumstances in which an arrest is appropriate. It simply acknowledges a valid Matricula Consular as a

document that will suffice to identify an individual in a situation where an individual's identity becomes relevant. The operations of the Durham Police Department will not be impacted by the presence or acceptance of a valid Matricula Consular for the limited purposes of personal identification. Furthermore, the discretion of the officer to make an arrest under appropriate circumstances is in no way impeded by the presence of a valid Matricula Consular.

Council should be aware that as with many aspects of the national immigration debate, there is some debate and controversy regarding among other things, the security and validity of the Matricula Consular. Because of the particular wording and effect of the specific resolution before you, we believe that your consideration of this resolution need not be impacted by this debate.

The Durham Police Department was also consulted on this matter and it is my understanding they do not object to the adoption of the resolution as written.

**RESOLUTION SUPPORTING RECOGNITION OF THE MATRICULA CONSULAR AS A
VALID FORM OF IDENTIFICATION**

Whereas, the City of Durham respects and promotes the right of all of its residents to equal treatment under the law; and

Whereas, many immigrants who could have obtained a driver's license by using a tax ID number prior to 2005 are no longer able to do so now that current law requires a social security number; and

Whereas, if a Durham city law enforcement official discovers that a driver is not carrying a license when making a traffic stop for a minor violation such as speeding or not fully stopping for a stop sign, the officer would typically issue a citation rather than making an arrest, provided a) there are no indications of criminal activity or driving under the influence, and b) the driver has a valid ID card; and

Whereas, the Mexican Matricula Consular has been shown to be a highly secure form of identification, issued to Mexican citizens living in other countries and containing several levels of machine-readable verification; and

Whereas, acceptance of the Matricula Consular as a valid form of ID would not only assist in minimizing unnecessary and potentially life-changing arrests of hard-working residents guilty of no more than a minor traffic infraction, but would also be useful for banking, library, and other civil functions;

THEREFORE, BE IT RESOLVED, that the City Council of the City of Durham hereby formally supports recognition of a properly issued and obtained Mexican Matricula Consular as a valid form of identification, not substituting for a driver's license, but authenticating a person's identity, and, with regard to activities of the Durham Police Department, supports issuance of a citation to persons showing such identification in situations where a citation would be issued to any driver lacking a license but with another valid form of identification, while leaving discretion to the officer as to whether to arrest.

This Resolution is effective upon adoption.