



Privacy Advisory Commission
June 1, 2017 5:00 PM
Oakland City Hall
Hearing Room 1
1 Frank H. Ogawa Plaza, 3rd Floor
Meeting Agenda

Commission Members: *District 1 Representative: Reem Suleiman, District 2 Representative: Vacant, District 3 Representative: Brian M. Hofer, District 4 Representative: Lou Katz, District 5 Representative: Raymundo Jacquez III, District 6 Representative: Clint M. Johnson, District 7 Representative: Robert Oliver, Council At-Large Representative: Saied R. Karamooz, Mayoral Representative: Deirdre Mulligan.*

Each person wishing to speak on items must fill out a speaker's card. Persons addressing the Privacy Advisory Commission shall state their names and the organization they are representing, if any.

1. 5:00pm: Call to Order, determination of quorum
2. 5:05pm: Review and approval of May 4 meeting minutes
3. 5:10pm: Open Forum
4. 5:15pm: Staff update on Surveillance Equipment Ordinance
5. 5:20pm: Review and discussion of Oakland Police Department's written report on their collaboration with ICE; database access and sharing with outside entities
6. 5:40pm: Review and discussion of Oakland Police Department's Immigration Policy
7. 7:00pm: Adjournment



Privacy Advisory Commission
May 4, 2017 5:00 PM
Oakland City Hall
Hearing Room 1
1 Frank H. Ogawa Plaza, 3rd Floor
Meeting Minutes

Commission Members: *District 1 Representative: Reem Suleiman, District 2 Representative: Vacant, District 3 Representative: Brian M. Hofer, District 4 Representative: Lou Katz, District 5 Representative: Raymundo Jacquez III, District 6 Representative: Clint M. Johnson, District 7 Representative: Robert Oliver, Council At-Large Representative: Saied R. Karamooz, Mayoral Representative: Deirdre Mulligan.*

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1. 5:00pm: Call to Order, determination of quorum

Members Present: Suleiman, Hofer, Katz, Jacquez, Johnson, Karamooz
Members Absent: Mulligan, Oliver

2. 5:05pm: Review and approval of April 6 meeting minutes

The April Minutes were approved unanimously.

3. 5:10pm: Open Forum

There were no public speakers.

4. 5:15pm: Staff update on Surveillance Equipment Ordinance proposal to Public Safety Committee
Joe DeVries noted that the Ordinance would go before the Public Safety Committee on May 9th, 2017 and briefly discussed the two different versions in the council packet. The second attachment is the same substantively but had been written to form to be inserted directly into the muni code. He noted that one change that may seem odd is the need for a separate ordinance to allow for penalties to be included that apply to the FLIR and DAC. However, the City Attorney felt it was important to do so as the original policies were adopted by resolution not ordinance.

Once the Committee considers the ordinance, the City will initiate a Meet and Confer process with the labor organizations before the ordinance can go to the full City Council.

There was one public speaker: JP Masser noted that the change in the second version that calls for a separate ordinance being required to establish penalties for violations of the FLIR and DAC policies seemed odd.

5. 5:20pm: Discussion and possible action on Non-Cooperation with Registry Ordinance
Chairperson Hofer invited three separate speakers to briefly speak on the issue:

Alicia Vafaie spoke about the need for an ordinance to respond to past practices including the period of 2002-2001 when 83,000 Muslim Men in the US were added to a registry and ultimately 13,000 were deported during that time without due process.

Sabiha Basrai noted that since Trump was elected there has been a steady rise in Islamophobia associated hate crimes.

Christine Singha noted the ordinance is modeled after a similar one in San Francisco and is needed since Trump promised during the campaign to create such a registry.

The Commission deliberated and made some changes to the ordinance and passed a modified version (attached) to be recommended to the City Council.

6. 5:40pm: Presentation by Electronic Frontier Foundation – Analysis of Oakland Police Department’s use of Automated License Plate Readers (ALPR), and overview of ALPR use by law enforcement

Dave Maass with ELF provided his analysis of ALPR usage in Oakland (PowerPoint attached). No action was taken.

7. 6:00pm: Review and discussion of Oakland Police Department’s Automated License Plate Reader policy. No action will be taken on this item at this meeting.

There was discussion of the Oakland program but no action was taken.

8. 7:00pm: Adjournment

THE NON-COOPERATION WITH IDENTITY-BASED REGISTRY/INTERNMENT ORDINANCE

Whereas, the City Council finds that freedom of religion and protection from persecution based on religion are founding ideals of our nation; and

Whereas, the City Council finds that the City of Oakland has a moral obligation to protect its citizens from persecution based on religious affiliation as well as national origin and ethnicity, which are often used as proxies to target religion; and

Whereas, the City Council finds that immigrants are valuable and essential members of both the California and Oakland community; and

Whereas, the City Council finds that a registry of individuals identified by religion, national origin, or ethnicity, in a list, database, or registry including that information, could be used by the government to persecute those individuals; and

Whereas, President Trump has repeatedly signaled that he intends to require Muslims to register in a database, by reenacting and expanding the 2002-2011 discriminatory Nation Security Entry-Exit Registration System, which required registration of non-citizen men from 25 Muslim-majority countries which lead to 83,000 registrants, 13,000 in the pipeline for deportation, and zero terrorism convictions; and

Whereas, Trump advisors have invoked WWII Japanese-American internment as a precedent for the proposed expansion of the registry; and

Whereas, President Trump has ordered a sweeping expansion of deportations and assigned unprecedented powers to Immigration and Customs Enforcement (ICE) officers targeting and terrorizing immigrant communities; and

Whereas, President Trump has issued two executive orders banning entry from certain Muslim-majority countries; and

Whereas, the City Council finds that the City of Oakland's Sanctuary City status has caused President Trump to threaten to withhold federal funding from the City of Oakland; and

Whereas, the City Council finds that the City of Oakland's Municipal Identification Card program, which exists to achieve certain policy goals of the City of Oakland, may also place participating individuals at risk of persecution, and therefore the program must be structured to ensure that sufficient safeguards are in place to prohibit such persecution while still allowing for the benefits of such program participation to be delivered to the individuals entitled to them; and

Whereas, the City Council finds that both the United States and California Constitution guarantee freedom of religion and equal protection under the law; and

Whereas, the City Council finds that it is the intent of this ordinance to prevent the use of City resources to assist in any way with a discriminatory government or private registry based on religion, national origin, or ethnicity for the purposes of persecuting such individuals, and to prevent the City from disclosing personal information regarding any individual that could be used to create such a registry;

Whereas, the City Council finds that it is not the intent of this ordinance to prohibit the City from creating or maintaining a list, database, or registry that contains ethnicity or national origin information where such information is collected in the aggregate or for complying with anti-discrimination laws or laws regarding the administration of public benefits, or for purposes of ensuring City programs adequately serve the City's diverse communities, or where the city collects this information to ensure equal or equitable access to City programs, services, benefits, and contracts; now, therefore

THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1. Title

This ordinance shall be known as the Non-Cooperation with Identity-Based Registry Ordinance.

Section 2. Assistance With Registry Or Database, Or Internment

- 1) No officer, employee, department, board, commission, or other entity of the City shall use City resources, moneys, facilities, property, equipment, or personnel to create, implement, provide investigation for, enforce, or assist in the creation, implementation, provision of investigation for, or enforcement of, or provide support in any manner for, any government program that (1) creates or compiles a List, Database, or Registry of individuals on the basis of religious affiliation, kinship, belief, or practice; national origin; or ethnicity or (2) requires registration of individuals in a List, Database, Registry, or otherwise, on the basis of religious affiliation, kinship, belief, or practice; national origin; or ethnicity, or (3) requires the detention, relocation or internment of individuals on the basis of religious affiliation, kinship, belief or practice; national origin, or ethnicity.
- 2) Notwithstanding any other law, no officer, employee, department, board, commission, or other entity of the City shall provide or disclose to any government authority or private party Personal Information regarding any individual that is requested for the purpose of (1) created or compiling a List, Database, or Registry of individuals based on religious affiliation, kinship, belief, or practice; national original; or ethnicity, or (2) requiring registration of individuals in a List, Database, Registry, or otherwise, on the basis of religious affiliation, kinship, belief, or practice; national origin; or ethnicity, or (3) requires the detention, relocation or internment of individuals on the basis of religious affiliation, kinship, belief or practice; national origin; or ethnicity. This includes a prohibition on making available Personal Information from any City database for the purposes mentioned in subsection 1) supra, including any City database

maintained by a private vendor under contract with the City or any subcontractor thereof.

- 3) This section shall apply to any individual, regardless of citizenship or immigration status, race, age, or any other factor.
- 4) ~~Nothing in this section prohibits an~~ No officer, employee, department, board, commission, or other entity of the City ~~from shall~~ sending to, or ~~receiving~~ receive from any local, state, or federal agency, aggregate information about religious affiliation, kinship, belief, or practice; national origin; or ethnicity within a geographic area, institution, category, or group, where such information is not associated with Personal Information, including but not limited to names, addresses, and telephone numbers, and cannot be used to identify individuals on the basis of religious affiliation, kinship, belief, or practice; national origin; or ethnicity, except for the purpose of complying with anti-discrimination laws or laws regarding the administration of public benefits, or for purposes of ensuring City programs adequately serve the City's diverse communities, or where the city collects this information to ensure equal or equitable access to City programs, services, benefits, and contracts.
- 5) Nothing in this section prohibits the City from creating or maintaining a List, Database, or Registry that contains ethnicity or national origin information where such information is collected for purposes of complying with anti-discriminating laws or laws regarding the administration of public benefits, or for purposes of ensuring City programs adequately serve the City's diverse communities, or where the City collects this information to ensure equal and equitable access to City programs, services, benefits, and contracts.
- 6) "List", "Database", or "Registry" shall mean any public, private, or joint public-private collection of information stored in any form.
- 7) "Personal Information" shall mean any information that can, on its own or in combination with other information, be used to contact, track, locate, identify, or reasonably infer the identity of a specific individual.
- 8) "Persons and Individual" refers to natural and legal persons.

Section 3. Investigation And Reporting

(a) Upon collection or the proposed collection of information about religious affiliation, kinship, belief, or practice; national origin; or ethnicity, the city department collecting or proposing to collect such information shall immediately notify the City Administrator.

~~(a)~~(b) The City Administrator, or his or her designee, shall review compliance with Section 2. The City Administrator may initiate and receive complaints regarding violations of Section 2. After conducting an investigation, the City Administrator may issue findings regarding any alleged violation. If the City Administrator finds that a violation occurred, the City Administrator shall, within 30 days of such finding, send a report of such finding to the City Council, the

Mayor, and the head of any department involved in the violation or in which the violation occurred. All officers, employees, departments, boards, commissions, and other entities of the City shall cooperate with the City Administrator in any investigation of a violation of Section 2.

~~(b)~~(c) By April 1 of each year, each City department shall certify its compliance with this ordinance by written notice to the City Administrator. By May 1 of each year, the City Administrator shall submit to the Privacy Advisory Commission City Council a written, public report regarding the department's compliance with Section 2 over the previous calendar year. At minimum, this report must (1) detail with specificity the steps the department has taken to ensure compliance with Section 2, (2) disclose any issues with compliance, including any violations or potential violations of this Ordinance, and (3) detail actions taken to cure any deficiencies with compliance. After receiving the recommendation of the Privacy Advisory Commission, if any, the City Administrator shall schedule and submit the written report to the City Council for review.

Section 4. Enforcement

- (a) Cause of Action. The City shall be liable in a civil action for a violation of this Ordinance filed by either (1) an individual whose Personal Information has been disclosed in violation of Section 2, or (2) a non-profit organization exempt from taxation pursuant to Title 26, Section 501 of the United States Code, that has the defense of immigrants' and ethnic minorities' rights as a stated purpose in its articles of incorporation or bylaws.
- (b) Damages and Civil Penalties. If the City is found liable in a cause of action brought by an individual under section (a)(1) above, the City shall be liable for (1) the damages suffered by the plaintiff, if any, as determined by the court, and (2) a civil penalty no greater than \$5,000 per violation, as determined by the court. If the City is found liable in a cause of action brought by an organization under section (a)(2) above, the City shall be liable for a civil penalty no greater than \$5,000 per violation, as determined by the court; provided that an organization may not recover a civil penalty if a court has already awarded a penalty to an individual or another organization arising out of the same violation. In determining the amount of the civil penalty in any action filed pursuant to Section 4, the court shall consider whether the violation was intentional or negligent, and any other prior violations of Section 2 by the City department that committed the violation. For the purpose of this subsection, each disclosure of each individual's Personal Information shall be a separate violation.
- (c) Attorney's Fees and Costs. A court shall award a plaintiff who prevails on a cause of action under subsection (a) reasonable attorney's fees and costs.
- (d) Limitations on Actions. Any person or entity bringing an action pursuant to Section 4 must first file a claim with the City pursuant to Government Code 905 or any successor statute within four years of the alleged violation.

- (e) Any disclosure of Personal Information required by a legally enforceable subpoena, judicial warrant, or court order shall not give rise to a cause of action under Section 4.

Section 5. Severability

The provisions in this Ordinance are severable. If any part of provision of this Ordinance, or the application of this Ordinance to any person or circumstance, is held invalid, the remainder of this Ordinance, including the application of such part or provisions to other persons or circumstances, shall not be affected by such holding and shall continue to have force and effect.

Section 6. Construction

The provisions of this Ordinance are to be construed broadly to effectuate the purposes of this Ordinance.

Section 7. Effective Date

This Ordinance shall take effect on [DATE].