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CITY ATTORNEY'S OFFICE

AMENDED IN PUBLIC SAFETY COMMITTEE MAY 14, 2019

## OAKLAND CITY COUNCIL

# ORDINANCE NO. 18540 C.M.S.

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**ORDINANCE: (1) AMENDING TITLE TWO OF THE OAKLAND MUNICIPAL CODE (TITLE TWO) TO PROHIBIT THE CITY FROM CONTRACTING WITH COMPANIES THAT CONTRACT WITH THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE), OR CUSTOMS AND BORDER PROTECTION (CBP), OR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES OFFICE OF REFUGEE RESETTLEMENT (HHS/ORR) TO PROVIDE SERVICES OR GOODS FOR DATA COLLECTION OR IMMIGRATION DETENTION FACILITIES; (2) AMENDING TITLE TWO TO PROHIBIT THE CITY FROM INVESTING IN COMPANIES THAT CONTRACT WITH ICE, OR CBP, OR HHS/ORR FOR THE SERVICES OR GOODS MENTIONED ABOVE; AND (3) REQUIRING THE CITY TO ENCOURAGE THE GOVERNING BODIES OF THE CITY'S EMPLOYEE PENSION PLANS TO AVOID INVESTING IN COMPANIES THAT CONTRACT WITH ICE, OR CBP, OR HHS/ORR FOR THE SERVICES OR GOODS MENTIONED ABOVE**

**WHEREAS**, President Trump issued an Executive Order on January 25, 2017 titled "Border Security and Immigration Enforcement" and created heightened fear and insecurity among many immigrant communities in Oakland and across the nation; and

**WHEREAS**, the City Council finds that the City of Oakland has a moral obligation to protect its residents from persecution; and

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

**WHEREAS**, the City of Oakland has been on record since July 8, 1986 as a City of Refuge when it adopted Resolution No. 63950; 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; and

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

**WHEREAS**, the Census Bureau turned over confidential information in 1943, including names and addresses, to help the US government identify Japanese Americans during World War II for the purpose of relocation; 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 three executive orders banning entry from certain Muslim-majority countries; and

**WHEREAS**, ICE Enforcement Removal Operations issued a Request for Information on August 3, 2017, to obtain commercial subscription data services capable of providing continuous real-time information pertaining to 500,000 identities per month from sources such as State Identification Numbers; real time jail booking data; credit history; insurance claims; phone number account information; wireless phone accounts; wire transfer data; driver's license information; Vehicle Registration Information; property information; pay day loan information; public court records; incarceration data; employment address data; Individual Taxpayer Identification Number (ITIN) data; and employer records; and

**WHEREAS**, ICE has a \$1.6 million contract with Thomson-Reuters, maker of popular law firm software products such as WestLaw and PeopleMap, for the above services via its CLEAR software (Consolidated Lead Evaluation and Reporting); and

**WHEREAS**, ICE has proposed a \$13.6 million four-year contract with Thomson-Reuters for continuing access to CLEAR that requires CLEAR to interface with Palantir's FALCON analytics, for the purposes of asset forfeiture investigations; and

**WHEREAS**, ICE has a \$41 million contract with Palantir Technologies for the development of an intelligence system called Investigative Case Management, intended to be capable of providing information pertaining to an individual's schooling, family relationships, employment information, phone records, immigration history, foreign exchange program status, personal connections, biometric traits, criminal records, and home and work addresses; and

**WHEREAS**, the Department of Homeland Security published a new rule on September 18, 2017, authorizing the collection of social media information on all immigrants, including permanent residents and naturalized citizens; and

**WHEREAS**, ICE has awarded Giant Oak with \$3 million for three separate contracts pertaining to social media data analytics services; and

**WHEREAS**, on September 8, 2017, ICE arrested hundreds of immigrants in intentionally targeted “Sanctuary” cities; and

**WHEREAS**, ICE’s “Extreme Vetting Initiative” industry day attracted large corporations like IBM, Lexis-Nexis, SAS, Deloitte, Unisys, Booz Allen, SAIC, and Palantir in pursuit of contracts that would provide ICE with various data broker, social media threat modeling, and extreme vetting services; and

**WHEREAS**, on January 8, 2018, ICE awarded a contract to Vigilant to obtain access to Vigilant’s commercially available license plate reader database, for the purpose of enhancing ICE’s ability to pursue civil immigration violations; and

**WHEREAS**, Microsoft’s \$19.4 million “Azure Government” contract with ICE is being used to “utilize deep learning capabilities to accelerate facial recognition and identification,” causing 300 Microsoft employees to threaten to resign in an open letter to the company; and

**WHEREAS**, IBM provided census tabulating card machines (Dehomag Hollerith D-11) and punch cards to Hitler’s Third Reich, and custom-designed specialized applications at each major concentration camp throughout Germany and greater Europe enabling the Nazi Party to automate identification and persecution of Jews and others during the Holocaust.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**SECTION 1.** Title 2 of the Oakland Municipal Code is amended to add Chapter 2.23 **AN ORDINANCE PROHIBITING THE CITY FROM CONTRACTING WITH AND/OR INVESTING IN COMPANIES THAT CONTRACT WITH THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, OR CUSTOMS AND BORDER PROTECTION, OR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES OFFICE OF REFUGEE RESETTLEMENT TO PROVIDE SERVICES OR GOODS FOR DATA COLLECTION OR IMMIGRATION DETENTION FACILITIES**, to read as follows:

**2.23.010. Title.**

This ordinance shall be known as the Sanctuary City Contracting and Investment Ordinance.

**2.23.020. Definitions.**

“City” means any department, agency, bureau, and/or subordinate division of the City of Oakland as provided by Chapter 2.29 of the Oakland Municipal Code and does not include the Port of Oakland or any subdivision thereof under Article 7 of the Oakland City Charter.

“Contract” means any agreement to provide goods to, or perform services for or on behalf of, the City, or such contracts considered or awarded in connection with a

“Contractor” means any person, partnership, corporation, joint venture, company, individual, sole proprietorship, vendor or other non-governmental legal or business entity who seeks to contract, submits a qualification statement, proposal, bid or quote or contracts directly or indirectly with the City for the purpose of providing goods or services to or for the City. The term “contractor” shall include any responsible managing corporate officer who has personal involvement and/or responsibility in obtaining a contract with the City or in supervising and/or performing the work prescribed by the contract.

“Data broker” (also commonly called information broker, information reseller, data aggregator, and information solution provider) means either of the following:

- i. The collection of information, including personal information about consumers, from a wide variety of sources for the purposes of reselling such information to their customers, which include both private-sector businesses and government agencies;
- ii. The aggregation of data that was collected for another purpose from that for which it is ultimately used.

“Extreme vetting” means data-mining, threat modeling, predictive risk analysis, or other similar service.

“Detention facilities” means any private party that provides transport, identification, processing, security, maintenance, or other operational support to a private or public facility intended or used for immigration detention purposes.

“ICE” means the United States Immigration and Customs Enforcement, and any subdivision thereof.

“CBP” means the United States Customs and Border Protection, and any subdivision thereof.

“HHS/ORR” means the United States Department of Health and Human Services, Office of Refugee Resettlement, and any subdivision thereof.

“Operative date” means 90 days after the effective date of this Chapter 2.23.

**2.23.030. Prohibition on Contracting with Contractors that Provide Services or Goods for Data Collection or immigration Detention facilities to the United States Immigrations and Customs Enforcement, ~~and/or~~ Customs and Border Protection, or the Department of Health and Human Services, Office of Refugee Resettlement.**

**A. General Prohibition**

The City shall not enter into a new contract or amend or extend an existing contract with any Contractor that provides Immigration and Customs Enforcement (ICE), ~~or~~ Customs and Border Protection (CBP), or the Department of Health and Human Services, Office of Refugee Resettlement (HHS/ORR) with any "Data Broker", "Extreme Vetting", or "Detention Facilities" services, as defined in Section 2.23.020. Such prohibited contracts include, but are not limited to:

- i. Professional services, including but not limited to, financial, banking, architectural, engineering, design, information technology or consulting services;
- ii. Construction or public works of improvement;
- iii. Software, hardware, electronic equipment and other types of information technology or related cyber network including, without limitation, cloud computing, internet, or cloud-based computer technology or services, or digital purchases.

**B. Exception and Waiver**

The prohibition on contracting with firms that that provide ICE, ~~or~~ CBP, or HHS/ORR with Data broker, Extreme vetting, or Detention facilities services, may be waived by the City Council or City Administrator for purchases within their respective contracting authorities by determining that no reasonable alternative exists. Such determination shall be made based on the following factors:

- i. There is no other qualified responsive bidders, proposers, or prospective vendors or providers that comply with the requirements of this Section 2.23.030 to perform the applicable contract, or as determined in writing by the City Administrator, the City would otherwise be unable to obtain the essential goods or services on a reasonable basis; or
- ii. The City Administrator determines, pursuant to applicable provisions of the Oakland Municipal Code, that the contract is necessary to respond to an emergency which endangers the public health or safety; and further determines that no entity that complies with the requirements of

this Section 2.23.030 and can respond to the emergency is immediately available to perform the required services; or

- iii. The City Administrator determines that there is a substantial difference in cost to purchase professional or technical services from another provider so that it is impractical, fiscally prudent or cost-prohibitive to contract with the sole or the few contractors or proposers that comply with this Section 2.23.030; or
- iv. A Contractor has demonstrated that it has ceased to perform "Data broker", "Extreme vetting", or "Detention facilities" services, so long as the scope of those services has ceased before the Operative date; or
- v. This policy conflicts with law(s) specific to this prohibition.

C. Solicitation and Notice of Contract Prohibition

All public works, construction bids, requests for qualifications, requests for proposals, or any other solicitation issued by the City shall include notice of the prohibition listed above.

D. Determination of Compliant Contractors

1. Information to be reviewed

To determine whether a contractor provides ICE, ~~or~~ CBP, or HHS/ORR with Data Broker, Extreme Vetting or Detention Facilities services, the City Administrator shall rely on one or more of the following:

- a. Information published by reliable sources;
- b. Information released by public agencies;
- c. A declaration under the penalty of perjury submitted by the Contractor, affirming that it does not provide Data Broker, Extreme Vetting or Detention Facilities services to ICE or CBP;
- d. Information submitted to the City Administrator by any member of the public, and thereafter duly verified.

2. Notice of Determination and Appeal

Any Contractor determined to be a supplier of Data Broker, Extreme Vetting or Detention Facilities services to ICE or CBP shall be notified by the

City Administrator of such determination. Any such Contractor shall be entitled to a review of the determination by appeal to the City Administrator. Request for such review shall be made within thirty (30) days of notification, or seven (7) days of the date of a City solicitation or notice of a pending contract or purchase, of interest to the Person or Entity seeking review. Upon receiving the appeal determination from the City Administrator, the Contractor may appeal the City Administrator's determination to the City Council, within fifteen (15) days of the determination.

**E. Contract Stipulation**

Prior to the City Council or City Administrator awarding any contract to a Contractor for the purpose of supplying a commodity to the City, the City Administrator, or any official agent of the City, shall require the contractor to stipulate, as a material condition of the contract, that it has not been contracted to provide ICE, ~~or~~ CBP, or HHS/ORR with Data broker, Extreme vetting, or Immigration detention facilities services and that the City, in its sole discretion shall determine such failure.

**2.23.040. Prohibition on Investment.**

The City shall not make any investment in companies identified as providers of Data Broker, Extreme Vetting or Detention Facilities services to ICE, ~~or~~ CBP, or HHS/ORR. The City will monitor its investments on a regular basis to ensure compliance.

**2.23.050. Investigation and Reporting.**

**A. Compliance Review and Waiver Documentation**

The City Administrator, or his or her designee, shall review compliance with Sections 2.23.030 and 2.23.040. The City Administrator may initiate and shall receive and investigate all complaints regarding violations of Sections 2.23.030 and 2.23.040. After investigating such complaints, the City Administrator shall 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 Sections 2.23.030 and/or 2.23.040.

The City Administrator shall also maintain a record documenting the basis for, and periodically report to the City Council, every exercise of a waiver implemented pursuant to this subsection, or any determination of non-applicability or exception.

B. The City Administrator shall to the extent permissible by law, remedy any such violations and shall use all legal measures available to rescind, terminate, or void contracts awarded in violation of this ordinance. The City Administrator shall consult with the City Attorney in such efforts.

C. By April 1 of each year, the City Administrator shall certify compliance with this ordinance by preparing a written report. By May 1 of each year, the City Administrator shall submit to the Privacy Advisory Commission a written, public report regarding compliance with Sections 2.23.030 and 2.23.040 over the previous calendar year. At minimum, this report must (1) detail with specificity the steps taken to ensure compliance with Sections 2.23.030 and 2.23.040, (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.

#### **2.23.060. Enforcement and Penalties.**

##### **A. Cause of Action.**

Any willful or intentional violation of this Ordinance constitutes an injury, and any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce this Ordinance.

##### **B. Damages and Civil Penalties.**

If the City is found liable in a cause of action brought by an individual under section A. 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 \$1000 per violation, as determined by the court. In determining the amount of the civil penalty, the court shall consider whether the violation was willful or intentional and any other prior violations of this ordinance by the City.

##### **C. Limitations on Actions.**

Any person bringing an action pursuant to this ordinance must first file a claim with the City pursuant to Government Code 905 et seq. or any successor statute.

D. Criminal Penalties.

Any Person or Entity knowingly or willingly supplying false information in violation of Section 2.23.030.D.1.c shall be guilty of a misdemeanor and up to a \$1,000 fine. No other violation of this ordinance shall constitute a misdemeanor.

E. Indemnification.

A Contractor shall defend and indemnify and hold harmless the City of Oakland, its officers, and employees, (collectively, "Indemnified Parties") from and against all third party allegations, claims, actions, suits, demands, damages, liabilities, obligations, losses, settlements, judgments, costs and expenses (including without limitation reasonable attorneys' fees and costs) ("Claims") which arise out of or, related to, the Section 2.23.030.D.1.c declaration made by the Person or Entity.

**2.23.070. Rules and Regulations.**

The City Administrator is authorized to promulgate any rules and regulations or administrative instruction, necessary or appropriate to carry out the purposes and requirements of this ordinance.

**SECTION 2. Encouragement of City Employee Pension Plans to Avoid investments in companies identified as providers of Data Broker, Extreme Vetting or Immigration Detention Facility services to the United States Immigration and Customs Enforcement, and/or Customs and Border Protection, or the Department of Health and Human Services Office of Refugee Resettlement.**

**A. General Requirement**

The City shall encourage the governing bodies that oversee the pension plans for its employees to avoid pension fund investments in companies identified as providers of Data Broker, Extreme Vetting or Immigration Detention Facility services, as those terms are defined in Chapter 2.23 of the Oakland Municipal Code, to the United States Immigration and Customs Enforcement, and/or Customs and Border Protection, or the Department of Health and Human Services, Office of Refugee Resettlement.

**B. Rules and Regulations**

The City Administrator is authorized to promulgate any rules and regulations or administrative instruction, necessary or appropriate to carry out the purposes and requirements of this provision.

**SECTION 3. 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 4. Construction.**

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

**SECTION 5. Effective date.**

This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

**JUN 0 4 2019**

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, ~~WILLIAMS~~ TAYLOR, THAO AND PRESIDENT KAPLAN - 7

NOES - 0

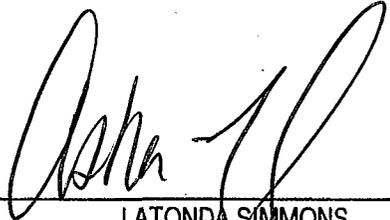
ABSENT - 0

ABSTENTION - 0

Excused - 1 Reed

Introduction Date

**MAY 2 1 2019**

ATTEST: 

LATONDA SIMMONS  
City Clerk and Clerk of the Council  
of the City of Oakland, California

Date of Attestation: June 13, 2019

## NOTICE AND DIGEST

**ORDINANCE: (1) AMENDING TITLE TWO OF THE OAKLAND MUNICIPAL CODE (TITLE TWO) TO PROHIBIT THE CITY FROM CONTRACTING WITH COMPANIES THAT CONTRACT WITH THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE), CUSTOMS AND BORDER PROTECTION (CBP), OR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES OFFICE OF REFUGEE RESETTLEMENT (HHS/ORR) TO PROVIDE SERVICES OR GOODS FOR DATA COLLECTION OR IMMIGRATION DETENTION FACILITIES; (2) AMENDING TITLE TWO TO PROHIBIT THE CITY FROM INVESTING IN COMPANIES THAT CONTRACT WITH ICE, CBP, OR HHS/ORR FOR THE SERVICES OR GOODS MENTIONED ABOVE; AND (3) REQUIRING THE CITY TO ENCOURAGE THE GOVERNING BODIES OF THE CITY'S EMPLOYEE PENSION PLANS TO AVOID INVESTING IN COMPANIES THAT CONTRACT WITH ICE OR CBP FOR THE SERVICES OR GOODS MENTIONED ABOVE**

This ordinance will prohibit the City from contracting with, and/or investing in, companies that provide certain data collection services and/or immigration detention facilities to the federal government. It will also require the City to encourage the City's pension plans to avoid investing in such companies as referenced above.