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ACTION CALENDAR

May 1, 2018

(Continued from April 3, 2018)

To: Honorable Mayor and Members of the City Council
 From: Councilmembers Worthington, Harrison, and Davila
 Subject: Referral to Peace & Justice Commission: Ordinance Prohibiting the Award of City Contracts to Vendors Acting as Data Brokers or Providing Extreme Vetting Services to ICE, as well as Prohibiting City Investment in such Companies

RECOMMENDATION

Referral to the Peace & Justice Commission to consider the attached draft ordinance.

BACKGROUND

On January 27, 2017, the President signed Executive Order 13769, commonly known as the Muslim travel ban. This order, as well as the proposed construction of a border wall, the possible termination of DACA, and the usage of social media data to target and detain immigrants across the nation, has posed serious threats to the privacy, safety, dignity, and quality of life to many members of the Berkeley Community.

On March 14, 2017, the Berkeley City Council voted to divest City funds from companies involved in the border wall construction. We must continue this effort, as well as regional and state level efforts to protect the sanctuary status of our communities.

On October 31, 2017, the Berkeley City Council passed a referral to the Peace and Justice Commission instructing the commission to examine the companies it does business with and find ways to disengage from companies found to be involved with creating databases and registries used to target immigrants and religious minorities, as well as recommending that the City of Berkeley divest from all service providers to the US ICE.

My office has now prepared an updated and refined ordinance for the commission to consider, which would prohibit the award of city contracts to vendors acting as "Data Brokers", and providing "Extreme Vetting" services and prohibit City investment in these companies.

It is our duty to uphold and promote values of inclusion and shared prosperity. We need longer tables, not higher walls.

FINANCIAL IMPLICATIONS:

Minimal.

ENVIRONMENTAL SUSTAINABILITY

Consistent with Berkeley's Environmental Sustainability Goals and no negative impact.

CONTACT PERSON:

Councilmember Kriss Worthington, 510-981-7170

THE SANCTUARY CITY CONTRACTING AND INVESTMENT ORDINANCE

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 Berkeley and across the nation; and

Whereas, the City Council finds that the City of Berkeley 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 Berkeley community; and

Whereas, the City of Berkeley has been on record since 1971 as a City of Refuge when it adopted Resolution No. 44,784-N.S.; 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; payday 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, and Palantir in pursuit of contracts that would provide ICE with various data broker, social media threat modeling, and extreme vetting services ; 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 BERKELEY DOES ORDAIN AS FOLLOWS:

Section 1. Title

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

Section 2. Definitions

- 1) "City" means the City of Berkeley, California.
- 2) "Data Broker" (also commonly called information broker, information reseller, data aggregator, and information solution provider) means either of the following:
 - a. 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;
 - b. The aggregation of data that was collected for another purpose from that for which it is ultimately used.
- 3) "Extreme Vetting" means data-mining, threat modeling, predictive risk analysis, or other similar service.
- 4) "ICE" means the United States Immigration and Customs Enforcement, and any subdivision thereof.

Section 3. Prohibition on Use of City Resources

- 1) No officer, employee, department, board, commission, City Council, City Administrator, or other entity of the City shall enter into a new, amended, or extended contract or agreement with, any person or entity that provides ICE with any "Data Broker" or "Extreme Vetting" services, as defined herein, unless the City Council makes a specific determination that no reasonable alternative exists, taking into consideration the following:
 - a) The intent and purpose of this ordinance;
 - b) The availability of alternative services, goods and equipment; and
 - c) Quantifiable additional costs resulting from use of available alternatives.
- 2) All public works, construction bids, requests for information, requests for proposals, or any other solicitation issued by the City shall include notice of the prohibition listed above.

- 3) For the purpose of determining which person or entity provides ICE with Data Broker or Extreme Vetting services, the City Administrator shall rely on:
 - a) Information published by reliable sources
 - b) Information released by public agencies
 - c) A declaration under the penalty of perjury executed by the person or entity, affirming that they do not provide Data Broker or Extreme Vetting services to ICE
 - d) Information submitted to the City Administrator by any member of the public, and thereafter duly verified
- 4) Any person or entity identified as a supplier of Data Broker or Extreme Vetting services to ICE and potentially affected by this section shall be notified by the City Administrator of the determination. Any such person or entity 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. Any person or entity vendor so identified may appeal the City Administrator's determination to the City Council, within fifteen (15) days of the determination.
- 5) Any existing contract, purchase agreement, or other obligation shall not be renewed or extended if the person or entity continues to provide Data Broker or Extreme Vetting services to ICE.

Section 4. Prohibition on Investment

- 1) The City of Berkeley shall not make any investment in stocks, bonds, securities, or other obligations issued by any provider of Data Broker or Extreme Vetting services to ICE.
- 2) The City Council shall adopt a plan with respect to pension fund investments and shall implement such a plan consistent with the intent of this act.

Section 5. Investigation And Reporting

- (a) The City Administrator, or his or her designee, shall review compliance with Sections 3-4. The City Administrator may initiate and shall receive complaints regarding violations of Sections 3- 4. 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 3-4.
- (b) By April 1 of each year, each City department shall certify its compliance with this ordinance by written notice to the City Administrator.
- (c) By May 1 of each year, the City Administrator shall schedule and submit to the City Council a written, public report regarding the department's compliance with Sections 3-4 over the previous calendar year. At minimum, this report must (1) detail with specificity the steps the department has taken to ensure compliance with Sections 3-4, (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.

Section 6. Enforcement

- (a) Cause of Action. Any 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 \$5,000 per violation, as determined by the court. In determining the amount of the civil penalty, the court shall consider whether the violation was intentional or negligent, and any other prior violations of this ordinance by the City department that committed the 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 bringing an action pursuant to this ordinance 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 person or entity knowingly or willingly supplying false information in violation of Section 3 (3)(c), shall be guilty of a misdemeanor and up to a \$1,000 fine.

Section 7. 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 8. Construction

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

Section 9. Effective Date

This Ordinance shall take effect on [DATE].