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OFFICE OF THE CITY CLERK
OAKLAND
2019 MAY -2 PM 6:26

AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Joe DeVries
Chief Privacy Officer

SUBJECT: Sanctuary City Contracting and
Investment Ordinance

DATE: April 29, 2019

City Administrator Approval

Date:

5/2/19

RECOMMENDATION

Staff Recommends That The City Council Adopt An Ordinance: (1) Amending Title Two Of The Oakland Municipal Code 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) To Provide Services Or Goods For Data Collection Or Immigration Detention Facilities; (2) Prohibiting The City From Investing In Companies That Contract With ICE Or CBP 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

EXECUTIVE SUMMARY

This ordinance will prohibit the City from contracting with any person or entity that provides the United States Immigration and Customs Enforcement (ICE) or United States Customs and Border Protection (CBP) with any "Data Broker", "Extreme Vetting", or "Detention Facilities" services unless the City Council makes a specific determination that no reasonable alternative exists. The ordinance also prohibits the City from investing in any of these companies and requires the City to include notice of these prohibitions in any Requests for Proposals (RFPs), Requests for Qualifications (RFQs), and any construction or other contracting bids. The ordinance also requires that the City provide an annual report to the Privacy Advisory Commission on its enforcement.

BACKGROUND / LEGISLATIVE HISTORY

Since early 2018, a state-wide coalition of civil liberties, human and immigrants' rights groups representing over 650,000 people has been advocating for the Sanctuary Contracting and Investment ordinance. The City of Alameda introduced a version of this ordinance and it is presently under staff review. In February 2018, Alameda rejected a \$500,000 contract proposal from Vigilant Solutions, due to the vendor's data sharing practices with ICE. The City of Richmond enacted its version of this ordinance into law on June 5, 2018 by a 6-1 vote. The City

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of Berkeley adopted the ordinance on April 23, 2019, with unanimous support. Like Oakland, all of these neighboring Cities are also Sanctuary Cities.

At the urging of the coalition, Assembly Member Bonta introduced the Sanctuary Contracting and Investment Act (AB 1332) at the State level. On April 23, 2019, AB 1332 was approved by the Judiciary Committee and the bill is now headed towards its next committee stop. A summary of the methodology for that bill is **Attachment A**.

Other sanctuary cities have also rejected vendor proposals due to the same concerns that the vendors are sharing data with ICE. On March 13, 2018, the Culver City Council rejected a Vigilant Solutions proposal for license plate reader equipment, and on March 20, 2018, San Pablo tabled a \$2.49 million proposal which included license plate readers from Vigilant Solutions, for the same reason.

In April 2018, the Privacy Advisory Commission reviewed the Sanctuary City Contracting and Investment Ordinance and unanimously recommended its approval to avoid City of Oakland funds being used to support any entity assisting ICE or CBP in its expanded enforcements efforts nationally. This is synonymous with Ordinance No. 13459 C.M.S., the City's prohibition on contracting with entities contracting with the federal government to build the border wall.

The City has a history of using its contracting process to protest actions by the federal government or other governmental bodies by withholding contract or investment dollars. In the late 1980's the City adopted a policy to prohibit doing business with entities that also contract with companies involved in nuclear arms proliferation. In 2013, the City took a stand against contractors doing business with the State of Arizona due to its adoption of legislation that unfairly targeted persons of Hispanic decent in routine traffic stops.

The Sanctuary City Contracting and Investment Ordinance is a response to the recent ICE activity, including its efforts to target Sanctuary Cities with stepped up enforcement efforts and the impact those efforts have had on the Oakland community. There has been strong local interest in these types of ICE raids and deportations both politically and in the media, however, ICE has taken much more drastic steps to gather data on individuals that could ultimately be far more impactful. For example, 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. This effort and the contractors involved will allow ICE to gather huge amounts of personal data on millions of people nationally.

ANALYSIS AND POLICY ALTERNATIVES

Impact on Potential and Current Contracts

The contracting portion of this ordinance would impact a small number of potential contractors since the ordinance is narrowly focused on those who are a supplier of Data Broker, Extreme Vetting or Detention Facilities services to ICE or CBP. Also, the ordinance does not impact current contracts but will impact their extension or renewal. The ordinance requirements 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, taking into consideration the intent and purpose of this ordinance, based on the availability of alternative services, goods and equipment; and quantifiable additional costs resulting from use of available alternatives. Therefore, if the Council or City Administrator determines that no alternative exists or the only alternative would be prohibitive and costly, the ordinance requirements can be waived in that limited circumstance.

Implementation, Investigation, and Reporting

Implementation of the contracting portion of the ordinance will require a new schedule to be added to the City's current list of Combined Schedules that are received by the Contracts and Compliance Division of the City Administrator's Office. Contractors will be required to *self-report* any involvement with ICE/CBP during the normal contracting approval process with the City. The ordinance requires contractors to indemnify the City if they do not disclose a contract with ICE or CBP and the City is sued after the fact based on that false information being provided. The ordinance authorizes the City Administrator to investigate any violation of the ordinance, report the violation to the City Council and Mayor, and coordinate with the City Attorney to remedy the violation using all legal measures available to rescind, terminate, or void contracts awarded in violation.

Maintaining a list of prohibited contractors will be the responsibility of the City Administrator's Office and be delegated to the City's Chief Privacy Officer. That list will be informed by information published by reliable sources, information released by public agencies, 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, or through information submitted to the City Administrator by any member of the public and duly verified. However, if CA Assembly Bill 1332 is adopted into law, the responsibility for developing and maintaining the list will be assigned to the State Department of Justice, relieving localities of this responsibility.

Potentially Impacted Contracts

Staff has reviewed a list of businesses that have contracts to provide these services to ICE or CBP that was prepared through searching four comprehensive federal contracting websites. It is included as **Attachment B**. Most of the contractors do not have a current contract with the City, however, there are some that have significant contracts that are deeply imbedded in operations.

Motorola provides all of the City's first responders' radios and the 911 Computer Automated dispatch (CAD) system. Although Motorola is not on the initial list of prohibited contractors, it recently purchased Vigilant Solutions which is a prohibited contractor. Ending the contract with Motorola would have a large financial and public safety impact on the City. Therefore, during

Motorola's renewal process staff recommends that the City Council and City Administrator make a finding that Motorola meets the criteria under Section B subsection 1,2 and 3 of the Ordinance to be granted a waiver.

Similarly, Microsoft Azure Government (Azure) is a prohibited contractor. The City's 911 CAD system is backed up in Azure and the application that tracks all Fire Department apparatus and personnel when responding to a fire uses Azure, the Police Department's Body Worn Camera vendor (Viewu) uses Azure to store all camera footage. If the intent of the ordinance is to separate the City from all vendors and their subsidiaries, including Azure, the impact on public safety operations would be significant and detrimental. Therefore, during Microsoft Azure's renewal process staff recommends that the City Council and City Administrator make a finding that Microsoft Azure meets the criteria under Section B subsections 1,2, and 3 of the Ordinance to be granted a waiver.

Thomas-Reuters is another prohibited contractor that owns Westlaw, the online legal research service for lawyers and legal professionals. Westlaw provides databases that the City Attorney's Office accesses on a regular basis and its databases are used in the Finance Department as well. In addition, it provides proprietary database services. Westlaw does have a competitor, Lexis-Nexus, that may be able provide a similar service. The Westlaw contract is due for renewal in two years. At that time, the City Attorney's Office would evaluate whether to seek a renewal or seek a viable alternate contractor through an RFP process.

Another vendor on the list is Level 3/CenturyLink which currently maintains the Data Center network. When this contract expires, the Department of Information Technology would issue an RFP to seek a viable alternate vendor.

As stated above, Section B. of the ordinance provides Exceptions and Waivers that can be made to allow for a contract otherwise prohibited by the ordinance under certain conditions. In the instances of Motorola and Microsoft Azure, ending these contracts would have significant negative impact based on the City's financial investment into these systems and also have direct negative impact the City's Public Safety infrastructure systems. Section B contemplates four exemptions including: a lack of other vendors, a threat to the City's immediate response to an emergency, a substantial cost difference, and a vendor that ended its relationship with ICE or CBP and is now qualified.

Prohibition on Investment

Implementation of the investment portion of the ordinance includes monitoring of the City's investments on a regular basis, and responding to any new information received about companies that may become ineligible based on the ordinance. Most of the City's investments are in bonds as State Law restricts how the City can invest. Finance Department staff would not be able to monitor every single purchase and new developments on a daily basis. However, staff will check a list of banned firms maintained by the Chief Privacy Officer on a semi-annual basis (every six months) before making purchases. For example, if the City purchased a bond that invested in a firm that was not on the list when the purchase was made, and then it moved to that list, Finance staff would not have the capacity to monitor that development. Also, if the City discovered that it owned any bonds that were invested in a prohibited firm, the City would need to hold onto the bond until its maturity to avoid a penalty or loss from liquidating early.

The ordinance also requires the City to encourage the governing bodies that oversee employee pension funds to also avoid investments in such entities. Most City employees are part of the California Public Employee Retirement System (CalPERS) while some retirees are still part of the closed Police and Fire Retirement System (PFRS). The ordinance requires the City to contact these boards and encourage them to avoid investing in such entities. The City has no authority over those decisions however.

FISCAL IMPACT

Implementation of this ordinance will require staff resources to monitor new contracts and investments and investigate potential violations. Primarily, the implementation and compliance work will be done by the City Administrator's Office, Office of Contracts and Compliance, and the Finance Department. The total impact is not known because it is not possible to predict how many contractors the City works with who will also contract with ICE or CBP. Also, changes in federal leadership or policy regarding immigration could dramatically increase or decrease the use of such contractors. Additionally, if a contractor is identified that has a significant impact on City government and no path exists to allow that contract to be renewed/stay in place, the cost to the city to switch to a new vendor is unknown.

PUBLIC OUTREACH / INTEREST

This ordinance was discussed at two separate PAC Meetings on April 5, 2018 and September 6, 2018. Those meetings are publicly noticed and televised.

COORDINATION

This ordinance was developed by the Privacy Advisory Commission and reviewed by the City Administrator's Office, Office of Contracts and Compliance, Finance Department, Police Department, and the Information Technology Department. Budget Bureau and City Attorney's Office.

SUSTAINABLE OPPORTUNITIES

Economic: The information presented in this report presents no economic impact.

Environmental: There are no environmental opportunities identified in this report.

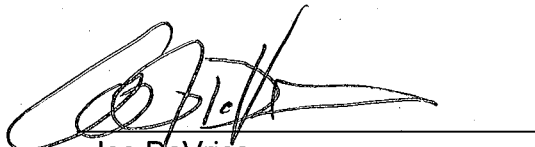
Social Equity: The adoption of the Sanctuary City Contracting and Investment Ordinance provides residents with an assurance that their tax dollars are not being used to support entities that assist ICE and the CBP to collect huge amounts of personal information about its residents. This will strengthen residents' faith in local government and aligns with Oakland's celebrated status as a Sanctuary City.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt the Sanctuary City Contracting and Investment Ordinance that prohibits the city from contracting with or investing in any entity that provides the united states immigration and customs enforcement (ICE) or United States Customs and Border Protection (CBP) with any "data broker", "extreme vetting", or "detention facilities" services unless the city council makes a specific determination that no reasonable alternative exists.

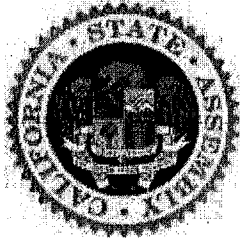
For questions regarding this report, please contact Joe DeVries, Assistant to the City Administrator at (510) 238-3083.

Respectfully submitted,



Joe DeVries
Assistant to the City Administrator
City Administrator's Office

- Attachments (A):** Methodology behind AB 1332
(B): Master List of Contractors likely to be impacted by ordinance



AB 1332 (Bonta) – Sanctuary State Contracting and Investment Act

Making Sanctuary Real

With the passage of SB 54 (California Values Act) and SB 31 (California Religious Freedom Act), our state signaled its strong desire to protect immigrant communities and those of different faiths.

Unfortunately, these landmark laws exposed an ugly truth – the outsourcing of surveillance and data mining to private vendors, and the rise of private prisons, means that California is often a sanctuary state in name only. Our coalition strives to “make sanctuary real.”

Not long after passage of the above laws, sanctuary opposed Sheriffs have found a loophole in SB 54 – publishing inmates release dates, which has resulted in ICE agents “lying in wait” outside the jailhouse doors. Well intentioned bills like SB 29 (Dignity Not Detention Act), and AB 103, which sought to end private prison immigration contracts, are avoided by simply switching the contracting entity, as the City of Adelanto did on March 27, 2019. By ending their contract with ICE, they made way for the GEO Group, one of the largest private prison operators in the world, to contract directly with the feds.

As a result of an ICE raid that occurred with the assistance of the Oakland Police Department in the sanctuary city of Oakland in August 2017, a strategy to make “sanctuary” more than a meaningless declaration was developed. Rather than go after every vendor that supports the federal immigration apparatus, the three most harmful categories of vendors were identified: data brokers, extreme vetting (the so-called Digital Muslim Ban), and detention facility support.

As research into private data brokers began, journalists and organizations like the ACLU were

revealing the web of data sharing that ICE was enmeshed in – pulling license plate reader data from local “sanctuary city” police departments via automated license plate reader vendor Vigilant Solutions¹; shopping centers were also feeding data on their customers to the same network that ICE had access to.²

Meanwhile, Thomson-Reuters, maker of the popular legal research tool WestLaw, used its voluminous databases of public records to win a contract award with an eye-opening obligation: they must provide the identities of 500,000 people *per month* to ICE. As we saw in WWII, the innocuous collection of public data (e.g. census surveys) turned into a nightmare for targeted populations, as the German and American governments used the data to place targeted communities into camps. As Nazi soldiers advanced closer, Dutch resistance fighters famously burned a municipal register’s records containing information on 70,000 Jews³.

Donald Trump’s “Muslim Ban” is causing great harm to families caught on opposite sides of the border, and even for American Muslims now afraid to travel for work or pleasure, unsure if they’ll be allowed back into the country.

Although ICE has backed away from its original plans pertaining to extreme vetting due to popular outrage, the attempt revealed an Orwellian philosophy: predictive analytics would be used to determine which immigrant might be a “positively contributing member of society” and that those

¹ <https://www.aclunc.org/blog/documents-reveal-ice-using-driver-location-data-local-police-deportations>

² <https://www.theverge.com/2018/7/10/17555232/ice-license-plate-readers-california-mall-irvine-company>

³ <https://medium.com/@hansdezward/during-world-war-ii-we-did-have-something-to-hide-40689565c550>

deemed too radical or extreme would not be allowed entry.⁴

As the kids-in-cages story broke due to Trump's policy of family separation at the border, private prison vendors rapidly expanded their number of owned or operated facilities, banking on an expansion of Trump's immigration enforcement tactics.⁵ In addition to the financial incentives from the contracts themselves, private prison vendors are capitalizing on a second revenue stream: the detainee labor, which is sold to large corporations for pennies on the dollar or used at the facilities themselves, eliminating the jobs of typical prison employees.⁶

Potential Impact of This Bill

Having identified the three categories of vendors doing the most harm, we next filed public records request with cities and counties throughout California, attempting to gauge how many contracts could be impacted were this bill to be adopted.

We also reviewed federal contracting websites, to see which vendors were entering into agreements with federal immigration agencies. We used the following websites:

1. Fbo.gov
2. Usaspending.gov
3. Govtribe.com
4. Usa.gov

Several of the above websites allow the user to search by agency specifically and generally (e.g. "Immigrations and Customs Enforcement", and "immigration"), by category of vendor (e.g. "data") and by NAISC codes (e.g. "518210" for Data

⁴ https://www.washingtonpost.com/news/the-switch/wp/2018/05/17/ice-just-abandoned-its-dream-of-extreme-vetting-software-that-could-predict-whether-a-foreign-visitor-would-become-a-terrorist/?noredirect=on&utm_term=.872a1ea6e7b0

⁵ <https://www.thedailybeast.com/dollar800-million-in-taxpayer-money-went-to-private-prisons-where-migrants-work-for-pennies>

⁶ <https://www.star-telegram.com/opinion/opn-columns-blogs/other-voices/article214205559.html>

Processing, Hosting, and Related Services; "519130" for Internet Publishing and Broadcasting and Web Search Portals; "561612" for Security Guards & Patrol Services).

In reviewing the responses to our public record requests compared against the information we were finding on the contracting websites, we found that a typical city will have 2-3 contracts that may be subject to the bill; a county with a jail may have 5-6 contracts at issue. See the attached "Master List of Contracts", the universe of operative contracts that may be impacted by this bill as of this date.

Although federal immigration agencies have hundreds of operative contracts at any time, the narrow definitions of our three categories of vendors greatly reduce the amount of research needed to achieve compliance. When reviewing ICE specific data broker contracts (using the 518210 code, we may capture both "data broker" and "extreme vetting" vendors, as they sometimes fall into the same contracting category), a search on usaspending.gov reveals that there are only twenty-five operative contracts to review. Several are clearly irrelevant (e.g. "Cabling and installation"). By examining the scope of work in each contract, we can determine whether the services provided meet one of our three definitions.

The author of the master contract list spent approximately ten hours researching. It is important to note that these contracts typically last 3-5 years, these vendors are not in businesses like retail where a government agency might make daily purchases from them (resulting in more reviews needed), and the existing contracts that may be impacted by this bill will have different expiration dates. The research time necessary to achieve compliance will thus be spread out over a long period of time.

As the first adopter of this model in June 2018, the City of Richmond has not needed to grant a waiver, nor hire additional staff to review contract proposals.

**MASTER LIST OF CONTRACTS LIKELY TO BE IMPACTED BY SANCTUARY
STATE CONTRACTING AND INVESTMENT ACT**

(f) "Person or entity" means any private natural person, any corporation, institution, subsidiary, affiliate, or division under operating control of that person, any parent entity that has operating control over that person, and any subsidiary, affiliate, or division under operating control of that parent entity. "Person or entity" does not include any government entity or government employee.

Any subdivision of a corporation that provides these services to ICE or CBP makes the entire corporation ineligible for city/county contracts.

(b) "Data broker" means both of the following:

(1) The collection of information, including personal information about consumers, from a wide variety of sources for the purposes of reselling that information to their customers, which include both private sector businesses and government agencies.

(2) The aggregation of data that was collected for another purpose different from that for which it is ultimately used.

1. Giant Oak
2. IntegrityOne Partners
3. Microsoft Azure Government
4. Palantir
5. Thomson-Reuters/Thomson-Reuters Special Services/West Publishing
6. Unisys
7. Vigilant Solutions (Motorola Solutions just purchased them)

(c) "Detention facilities" means any private party that provides transportation, identification, processing, security, maintenance, or other operational support to a private or public facility intended or actually used for immigration detention purposes.

1. The GEO Group, Inc.
2. CoreCivic
3. Management & Training Corp.
4. Ahtna
5. AGS
6. MVM, Inc.
7. AKAL Security
8. ICA
9. Lasalle Corp.
10. Global Precision Systems
11. CSI Aviation
12. G4S

13. Aramark
14. Compass Group
15. Trailboss
16. Keefe Group
17. Trinity Services Group, Inc.
18. GTL
19. Titalton
20. Century Link
21. Unisys
22. Securus Technologies
23. Corizon Health
24. Advanced Correctional Healthcare, Inc.
25. Correct Care Solutions
26. CFG Health Systems, LLC
27. ConMed
28. PrimeCare Medical
29. Southern Health Partners
30. Armor Correctional Health Systems, Inc.
31. Capgemini Government Solutions, LLC.
32. PricewaterhouseCoopers Public Sector, LLC
33. Spectrum Security Services, Inc.
34. Unified Nutrimeals
35. Air Management Solutions, Inc.
36. General Dynamics IT
37. Comprehensive Health Services, Inc.
38. Hariom, Inc.
39. XL Associates, Inc.

(d) "Extreme vetting" means data mining, threat modeling, predictive risk analysis, or other similar service.

1. Giant Oak
2. Magnet Forensics
3. Microsoft Azure Government
4. Palantir
5. T-Rex Consulting Corp.

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OAKLAND

APPROVED AS TO FORM AND LEGALITY

2019 MAY -2 PM 6:26

Arnold S. Little
CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

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) 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 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

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 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.

"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.

"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.

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) 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 provide ICE or CBP 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 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 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. 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.

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.

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,

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND PRESIDENT KAPLAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

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

Date of Attestation: _____

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) OR CUSTOMS AND BORDER PROTECTION (CBP) 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 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.