

BOARD of SUPERVISORS



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MEMORANDUM

TO: Sheryl Evans Davis, Director, Human Rights Commission
Micki Callahan, Director, Department of Human Resources
Barbara A. Garcia, Director, Department of Public Health
William Scott, Police Chief, Police Department
Sergeant Rachael Kilshaw, Police Commission
Vicki Hennessy, Sheriff, Sheriff's Department
Jon Givner, Office of the City Attorney
George Gascon, District Attorney, Office of the District Attorney

FROM: Erica Major, Assistant Clerk, Public Safety and Neighborhood Services
Committee, Board of Supervisors

DATE: January 27, 2017

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Public Safety and Neighborhood Services Committee has received the following proposed legislation, introduced by Mayor Lee on January 24, 2017:

File No. 170092

Ordinance amending the Administrative Code to prohibit the City from using resources to create, implement, provide investigation or information for, enforce, or otherwise assist or support any government program requiring the registration of individuals on the basis of religion, or creating a database of individuals on the basis of religion.

If you have any comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c:
Susan Gard, Department of Human Resources
Greg Wagner, Department of Public Health
Colleen Chawla, Department of Public Health
Rowena Carr, Police Department
Kristine Demafeliz, Police Department
Katherine Gorwood, Sheriff's Department
Eileen Hirst, Sheriff's Department
Cristine Soto DeBerry, Office of the District Attorney
Maxwell Szabo, Office of the District Attorney

1 [Administrative Code - Non-Cooperation with Religion Registry]

2
3 **Ordinance amending the Administrative Code to prohibit the City from using resources**
4 **to create, implement, provide investigation or information for, enforce, or otherwise**
5 **assist or support any government program requiring the registration of individuals on**
6 **the basis of religion, or creating a database of individuals on the basis of religion.**

7 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
8 **Additions to Codes** are in *single-underline italics Times New Roman font*.
9 **Deletions to Codes** are in ~~*strikethrough italics Times New Roman font*~~.
10 **Board amendment additions** are in double-underlined Arial font.
11 **Board amendment deletions** are in ~~Arial font~~.
12 **Asterisks (* * * *)** indicate the omission of unchanged Code
13 subsections or parts of tables.

14 Be it ordained by the People of the City and County of San Francisco:

15 Section 1. The Administrative Code is hereby amended by adding Chapter 103 to
16 consist of Sections 103.1, 103.2, 103.3, 103.4, 103.5, 103.6, and 103.7, to read as follows:

17 **CHAPTER 103: RELIGION REGISTRY NON-COOPERATION ORDINANCE**

18
19 **SEC. 103.1. TITLE.**

20 *This Chapter 103 shall be known as the Religion Registry Non-Cooperation Ordinance.*

21
22 **SEC. 103.2. FINDINGS AND PURPOSE.**

23 *(a) From its earliest beginnings, the United States and its citizens have cherished religious*
24 *freedom. Many of the early settlers from Europe came to America to escape religious persecution, and*
25 *subsequent waves of immigrants included many refugees from religious oppression. Enshrined in the*

1 First Amendment to the Constitution is the admonition that “Congress shall make no law respecting an
2 establishment of religion, or prohibiting the free exercise thereof.” Even predating the First
3 Amendment, Article VI of the Constitution prohibited, and continues to prohibit, a religious test for any
4 federal office. The California Constitution is in line with its federal counterpart, guaranteeing, in
5 Article I, Section 4, the “[f]ree exercise and enjoyment of religion without discrimination or
6 preference” and prohibiting any law “respecting an establishment of religion.”

7 (b) These constitutional pronouncements have been matched in recent decades by legislation
8 recognizing that discrimination based on religion is intolerable in a free society. As prime examples,
9 the Civil Rights Act of 1964 outlaws discrimination on the basis of religion in employment and access
10 to public accommodations, the Fair Housing Act of 1968 outlaws discrimination on the basis of
11 religion in housing, and the Religious Freedom Restoration Act of 1993 offers considerable protection
12 against laws which, though neutral in form, place burdens on the free exercise of religion. In
13 California, the Unruh Act protects against religious discrimination in public accommodations, and the
14 Fair Employment and Housing Act protects against religious discrimination in those areas.

15 (c) San Francisco’s laws champion the same commitment to religious freedom, tolerance, and
16 diversity that federal and state law recognize. These principles are articulated, for example, in the
17 findings and policy declaration forming the basis for the Human Rights Commission (Administrative
18 Code, Sections 12A.1, 12A.2). It is the official policy of the City to eliminate discrimination within the
19 City based on religion. (Police Code, Section 3301.) Following through on that policy, City laws
20 proscribe religious discrimination in many areas, including public accommodations, employment, and
21 housing. (Police Code, Article 33.)

22 (d) Against this backdrop of federal, state, and local laws insisting that people not be treated
23 differently because of religion – demanding that people be free to enjoy their religious beliefs,
24 associations, practices, backgrounds, and identities – any proposal to base a governmental registry on
25 religion or for a governmental entity to compile a database of individuals based on religion is

1 anathema to this country, this state, and this city. For government to label people by religion would
2 repudiate our most cherished values.

3 (e) And such a registry or database would be very dangerous. It would demean those in our
4 community included in the registry or database, and would foster the very prejudice and discrimination
5 that federal, state, and local laws are designed to combat. It would teach people that hate, fear, and
6 suspicion of religious minorities is permissible. Misguided individuals could see the registry or
7 database as sanctioning the commission of hate crimes against religious minorities in general, and
8 especially against those individuals whose religion – or perceived religion – is targeted as the basis for
9 inclusion in the registry or database. At the same time, those individuals the government seeks to label
10 by religion would naturally be reluctant to interact with government beyond what is absolutely
11 necessary. Cooperation with local law enforcement investigations would likely decline; use of the
12 City’s public health facilities, and the provision of personal information related to public health, would
13 likely decline; participation in programs designed to uplift the disadvantaged would likely decline. In
14 these and like circumstances, the entire community – not just the targeted individuals – would suffer.

15 (f) Further, once the government starts classifying people by religion, no one can say where or
16 when the practice will end; which groups will be the subject of classification, and which not; how the
17 information will be used by the authorities; and what additional measures, if any, will be taken by
18 government toward or against people based on religion. In this regard, history’s examples are not
19 comforting. Gross violations of human rights can begin with smaller violations. The first step down
20 that road can lead to second, third, and fourth steps that at the beginning would seem unimaginable.

21 (g) Notwithstanding this country’s fidelity to the principle of religious freedom, there have been
22 instances in which we have sometimes fallen short in practicing religious tolerance. Catholics, Jews,
23 Muslims, Jehovah’s Witnesses, and some other Protestant sects, among many other faith communities,
24 have at times felt the sting of religious bigotry and discrimination. Members of certain faith
25 communities have been the victims of hate crimes, including in recent years most particularly Jews and

1 Muslims. There has been an upsurge in anti-Muslim sentiment in recent years, as measured by hate
2 crimes statistics and other social science data. In the modern era, if not always in the more distant
3 past, government has acted as a positive force to curb religious bigotry and discrimination. For
4 government to start to classify people by religion through a registry or other database would put
5 government on a different, more ominous course and would profoundly injure the City's relationship
6 with its residents.

7
8 **SEC. 103.3. DEFINITIONS.**

9 For purposes of this Chapter 103, the following terms have the following meanings:

10 "List, Database, or Registry" means any public, private, or joint public-private collection of
11 information stored in any form.

12 "Personal Information" means any information that can, on its own or in combination with
13 other information, be used to contact, track, locate, identify, or reasonably infer the identity of, a
14 specific individual.

15
16 **SEC. 103.4. ASSISTANCE WITH GOVERNMENT REGISTRY OR DATABASE.**

17 (a) No officer, employee, department, board, commission, or other entity of the City shall use
18 City moneys, facilities, property, equipment, or personnel to create, implement, provide investigation
19 for, enforce, or assist in the creation, implementation, provision of investigation for, or enforcement of,
20 or provide support in any manner for, any government program that (1) creates or compiles a List,
21 Database, or Registry of individuals on the basis of religious affiliation, kinship, belief, or practice, or
22 (2) requires registration of individuals in a List, Database, Registry, or otherwise, on the basis of
23 religious affiliation, kinship, belief, or practice.

24 (b) Notwithstanding any other law, no officer, employee, department, board, commission, or
25 other entity of the City shall provide or disclose to any government authority Personal Information

1 regarding any individual that is requested for the purpose of (1) creating or compiling a List,
2 Database, or Registry of individuals based on religious affiliation, kinship, belief, or practice, or (2)
3 requiring registration of individuals in a List, Database, registry, or otherwise, on the basis of religious
4 affiliation, kinship, belief, or practice. In addition, regardless of the purpose of the request, no such
5 information shall be provided or disclosed to any government authority if it could potentially become
6 part of such a List, Database or Registry.

7 (c) This Section 103.4 shall apply to all individuals, regardless of citizenship or immigration
8 status, race, age, or any other factor.

9
10 **SEC. 103.5. ENFORCEMENT.**

11 The Director of the Human Rights Commission, or his or her designee (“the Director”) shall
12 review compliance with this Chapter 103. The Director may initiate and receive complaints regarding
13 violations of this Chapter. After conducting an investigation, the Director may issue findings regarding
14 any alleged violation. If the Director finds that a violation occurred, the Director shall, within 30 days
15 of such finding, send a report of such finding to the Board of Supervisors, the Mayor, and the head of
16 any department involved in the violation or in which the violation occurred. All officers, employees,
17 departments, boards, commissions, and other entities of the City shall cooperate with the Director in
18 any investigation of a violation of this Chapter.

19
20 **SEC. 103.6. UNDERTAKING FOR THE GENERAL WELFARE.**

21 In enacting and implementing this Chapter 103, the City is assuming an undertaking only to
22 promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an
23 obligation for breach of which it is liable in money damages to any person who claims that such breach
24 proximately caused injury.

1 **SEC. 103.7. SEVERABILITY.**

2 If any section, subsection, sentence, clause, phrase, or word of this Chapter 103, or any
3 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a
4 decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining
5 portions or applications of this Chapter. The Board of Supervisors hereby declares that it would have
6 passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not
7 declared invalid or unconstitutional without regard to whether any other portion of this Chapter or
8 application thereof would be subsequently declared invalid or unconstitutional.

9
10 Section 2. Effective Date. This ordinance shall become effective 30 days after
11 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
12 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
13 of Supervisors overrides the Mayor's veto of the ordinance.

14
15 APPROVED AS TO FORM:
16 DENNIS J. HERRERA, City Attorney

17 By:  _____
18 BRADLEY A. RUSSI
19 Deputy City Attorney

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LEGISLATIVE DIGEST

[Administrative Code - Non-Cooperation with Religion Registry]

Ordinance amending the Administrative Code to prohibit the City from using resources to create, implement, provide investigation or information for, enforce, or otherwise assist or support any government program requiring the registration of individuals on the basis of religion, or creating a database of individuals on the basis of religion.

Existing Law

Current law does not regulate whether the City may provide information to other government entities regarding the religious affiliation of any individual or assist other government entities in creating a database or registry of individuals based on religious affiliation. Current law prohibits the City from discriminating against any individual on the basis of religious affiliation.

Amendments to Current Law

The proposed ordinance would prohibit any City entity, employee, or officer from (1) using City resources to assist in any way with a government program that creates a list, database, or registry of individuals on the basis of religious affiliation or requires registration of individuals on the basis of religious affiliation, and (2) using City resources to disclose to any government entity personal information regarding any individual for the purposes of creating a list, database, or registry of individuals on the basis of religious affiliation. The ordinance would also prohibit the City from creating a list, registry, or database of individuals on the basis of religious affiliation. The Human Rights Commission is delegated authority to receive and investigate complaints of violations of the ordinance and to issue findings regarding any substantiated violation.

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