

1 [Administrative Code - Non-Cooperation with Religion~~Identity-Based~~ 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, national origin, or ethnicity, or creating a database of individuals**  
7 **on the basis of religion, national origin, or ethnicity.**

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

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

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

18 **CHAPTER 103: RELIGION REGISTRY NON-COOPERATION WITH IDENTITY-BASED**  
19 **REGISTRY ORDINANCE**

20 **SEC. 103.1. TITLE.**

21 **This Chapter 103 shall be known as the Religion Registry Non-Cooperation With Identity-**  
22 **Based Registry Ordinance.**

1            **SEC. 103.2. FINDINGS AND PURPOSE.**

2            (a) From its earliest beginnings, the United States and its citizens have cherished religious  
3 freedom. Many of the early settlers from Europe came to America to escape religious  
4 persecution, and subsequent waves of immigrants included many refugees from religious  
5 oppression. Enshrined in the First Amendment to the Constitution is the admonition that “Congress  
6 shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”  
7 Even predating the First Amendment, Article VI of the Constitution prohibited, and continues to  
8 prohibit, a religious test for any federal office. The California Constitution is in line with its federal  
9 counterpart, guaranteeing, in Article I, Section 4, the “[f]ree exercise and enjoyment of religion  
10 without discrimination or preference” and prohibiting any law “respecting an establishment of  
11 religion.”

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

20            (c) San Francisco’s laws champion the same commitment to religious freedom, tolerance, and  
21 diversity that federal and state law recognize. These principles are articulated, for example, in the  
22 findings and policy declaration forming the basis for the Human Rights Commission (Administrative  
23 Code, Sections 12A.1, 12A.2). It is the official policy of the City to eliminate discrimination within the  
24 City based on religion. (Police Code, Section 3301.) Following through on that policy, City laws  
25

1 proscribe religious discrimination in many areas, including public accommodations, employment, and  
2 housing. (Police Code, Article 33.)

3 (d) Against this backdrop of federal, state, and local laws insisting that people not be treated  
4 differently because of religion – demanding that people be free to enjoy their religious beliefs,  
5 associations, practices, backgrounds, and identities – any proposal to base a governmental registry on  
6 religion or for a governmental entity to compile a database of individuals based on religion is  
7 anathema to this country, this state, and this city. For government to label people by religion would  
8 repudiate our most cherished values.

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

21 (f) Further, once the government starts classifying people by religion, no one can say where or  
22 when the practice will end; which groups will be the subject of classification, and which not; how the  
23 information will be used by the authorities; and what additional measures, if any, will be taken by  
24 government toward or against people based on religion. In this regard, history’s examples are not  
25 comforting. Gross violations of human rights can begin with smaller violations. The first step down

1 that road can lead to second, third, and fourth steps that at the beginning would seem have seemed  
2 unimaginable.

3 (g) Notwithstanding this country's fidelity to the principle of religious freedom, there have been  
4 instances in which we have sometimes fallen short in practicing religious tolerance. Catholics, Jews,  
5 Muslims, Sikhs, Jehovah's Witnesses, and some other Protestant sects, among many other faith  
6 communities, have at times felt the sting of religious bigotry and discrimination. Members of certain  
7 faith communities have been the victims of hate crimes, including in recent years most particularly  
8 Jews and Muslims. There has been an upsurge in anti-Muslim sentiment in recent years, as measured  
9 by hate crimes statistics and other social science data. In the modern era, if not always in the more  
10 distant past, government has acted as a positive force to curb religious bigotry and discrimination. For  
11 government to start to classify people by religion through a registry or other database would put  
12 government on a different, more ominous course and would profoundly injure the City's relationship  
13 with its residents.

14 (h) A registry of individuals identified by national origin or ethnicity, or a database  
15 including that information, could be used by the government as a proxy for determining  
16 religion, as many countries and ethnic groups are made up of individuals of predominantly  
17 one religion. A registry or database keyed to national origin or ethnicity that is created for  
18 purposes of determining the likely religion of the people in the registry or database would be  
19 just as offensive to our values, just as damaging to the affected individuals, and just as  
20 harmful to our community, as a registry or database based directly on religion. And even if it  
21 could not be determined that such a registry or database was created for the purpose of  
22 indirectly classifying people by religion, it could, in fact, be used for that purpose, or have that  
23 effect.

24 (i) Independent of its possible use to indirectly identify individuals by religion, a registry  
25 or database classifying individuals by national origin or ethnicity would – like a classification

1 system based on religion – tread on the most fundamental values of our country, our state,  
2 and our community. Constitutional guarantees of equal protection of the laws cannot be  
3 squared with the maintenance of such a registry or database. Nor can state and City laws  
4 prohibiting discrimination based on national origin or ethnicity. Notwithstanding the  
5 persistence of ethnic prejudice in some quarters, and its exacerbation in a time of terrorism,  
6 eradication of such prejudice is among the highest priorities of all levels of government in the  
7 United States. To maintain a registry or database identifying people by national origin or  
8 ethnicity would grossly distort our priorities, and for the worse. And it would ignore the  
9 tragedies of history rooted in ethnic prejudice – such as the tragedy experienced during  
10 wartime, not so long ago, by persons of Japanese descent, including American citizens, in  
11 California and elsewhere. Rather than soft-pedal the dangers that would abound in a registry  
12 or database identifying individuals by national origin or ethnicity, this City should be ever-  
13 vigilant to call out those dangers and, within the limits of the law, should not cooperate in the  
14 creation, maintenance, or use of such a registry or database.

15 (j) It is the City’s intent that this Chapter prevent the use of City resources to assist in  
16 any way with a government registry based on religion, national origin, or ethnicity, and to  
17 prevent the City from disclosing personal information regarding any individual that could be  
18 used to create such a registry. Nonetheless, and out of abundance of caution, due solely to  
19 the existence of Section 1373(a) of Title 8 of the United States Code, this Chapter exempts  
20 from its scope the sending to or receiving from a Federal agency charged with enforcement of  
21 Federal immigration law information regarding an individual’s citizenship or immigration  
22 status. It is the City’s position that Section 1373(a) is unconstitutional, and the City has filed a  
23 federal lawsuit seeking a judgment declaring it as such. See *City and County of San*  
24 *Francisco v. Trump, et al.*, Case No. 3:17-cv-00485 (N.D. Cal.). Until the City obtains court  
25 relief from Section 1373(a), it will continue to comply with Section 1373(a).

1  
2  
3 **SEC. 103.3. DEFINITIONS.**

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

5 *“List, Database, or Registry” means any public, private, or joint public-private collection of*  
6 *information stored in any form.*

7 *“Personal Information” means any information that can, on its own or in combination with*  
8 *other information, be used to contact, track, locate, identify, or reasonably infer the identity of, a*  
9 *specific individual.*

10  
11 **SEC. 103.4. ASSISTANCE WITH GOVERNMENT REGISTRY OR DATABASE.**

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

20 *(b) Notwithstanding any other law, no officer, employee, department, board, commission, or*  
21 *other entity of the City shall provide or disclose to any government authority Personal Information*  
22 *regarding any individual that is requested for the purpose of (1) creating or compiling a List,*  
23 *Database, or Registry of individuals based on religious affiliation, kinship, belief, or practice; national*  
24 *origin; or ethnicity, or (2) requiring registration of individuals in a List, Database, registry, or*  
25 *otherwise, on the basis of religious affiliation, kinship, belief, or practice; national origin; or*

1 ethnicity. In addition, regardless of the purpose of the request, no such information shall be provided  
2 or disclosed to any government authority if it could potentially become part of such a List, Database or  
3 Registry. This includes a prohibition on making available Personal Information from any City  
4 database for the purposes mentioned in the foregoing sentence, including any City database  
5 maintained by a private vendor under contract with the City.

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

8 (d) Nothing in this Chapter 103 prohibits any officer, employee, department, board,  
9 commission, or other entity of the City from sending to, or receiving from, any local, state, or  
10 federal agency, aggregate information about religious affiliation, kinship, belief, or practice;  
11 national origin; or ethnicity within a geographic area, institution, category, or group, where  
12 such information is not associated with Personal Information, including but not limited to,  
13 names, addresses, and telephone numbers, and cannot be used to identify individuals on the  
14 basis of religious affiliation, kinship, belief, or practice; national origin; or ethnicity.

15 (e) Nothing in this Chapter 103 prohibits any officer, employee, department, board,  
16 commission, or other entity of the City from sending to, or receiving from, a Federal agency  
17 charged with enforcement of Federal immigration law information regarding an individual's  
18 citizenship or immigration status, lawful or unlawful. "Information regarding an individual's  
19 citizenship or immigration status, lawful or unlawful" for purposes of this Chapter 103, shall be  
20 interpreted consistent with Section 1373 of Title 8 of the United States Code. This subsection  
21 (e) shall expire by operation of law if a court of competent jurisdiction enters a judgment ruling  
22 8 U.S.C. § 1373(a) facially unconstitutional or unconstitutional as applied to the City.

23  
24 **SEC. 103.5. ENFORCEMENT AND REPORTING.**  
25

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

9           (b) By February 1 of each year, each City department shall submit to the Board of  
10 Supervisors a written, public report regarding the Department's compliance with this Chapter  
11 103 over the previous calendar year. This report, at minimum, must: (1) detail with specificity  
12 the steps the department has taken to ensure compliance with this Chapter; (2) disclose any  
13 issues with compliance, including any violations or potential violations of this Chapter; and (3)  
14 detail actions taken to cure any deficiencies with compliance.

15  
16           **SEC. 103.6. UNDERTAKING FOR THE GENERAL WELFARE.**

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

21  
22           **SEC. 103.7. SEVERABILITY.**

23           If any section, subsection, sentence, clause, phrase, or word of this Chapter 103, or any  
24 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a  
25 decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining

1 portions or applications of this Chapter. The Board of Supervisors hereby declares that it would have  
2 passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not  
3 declared invalid or unconstitutional without regard to whether any other portion of this Chapter or  
4 application thereof would be subsequently declared invalid or unconstitutional.

5  
6 Section 2. Effective Date. This ordinance shall become effective 30 days after  
7 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
8 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
9 of Supervisors overrides the Mayor’s veto of the ordinance.

10  
11 APPROVED AS TO FORM:  
12 DENNIS J. HERRERA, City Attorney

13 By: \_\_\_\_\_  
14 BRADLEY A. RUSSI  
15 Deputy City Attorney

16 n:\legana\as2017\1700395\01169828.docx