

Expert Organizations who worked on San Francisco Anti-Registry Ordinance: Asian Americans Advancing Justice- Asian Law Caucus, Council on American-Islamic Relations San Francisco Bay Area, ACLU California, Alliance of South Asians Taking Action, AROC

Non-Cooperation with Religion/National Origin/Ethnicity Registry/Internment

Model Ordinance Language

Based on the City of San Francisco and State of California

This ordinance prohibits the City from using resources to create, implement, provide investigation or information for enforcement, or otherwise assist or support any government program requiring the registration of individuals, creation of a database of individuals, and/or detention relocation or internment of individuals on the basis of religion, national origin, or ethnicity.

Section 1: Findings & Purpose

[Outline the history and contributions of Arab Middle Eastern Muslim and South Asian communities, Japanese incarceration during WWII, National Security Entry-Exit Registration System tailored to your local geography].

Section 2: Definitions

For purposes of this ordinance, the following terms have the following meaning:

“List, Database, or Registry” means any public, private, or join public-private collection of information stored in any form.

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

“Persons and Individual” refers to natural and legal persons.

Section 3: Assistance with Government Registry, Database, or Internment

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

national origin; or ethnicity or (3) requires the detention, relocation or internment of individuals on the basis of religious affiliation, kinship, belief or practice; national origin; or ethnicity.

- (b) Notwithstanding any other law, no officer, employee, department, board, commission, or other entity of the City shall provide or disclose to any government authority Personal Information regarding any individual that is requested for the purposes of (1) creating or compiling a List, Database, or Registry of individuals based on religious affiliation, kinship, belief, or practice; national origin; or ethnicity; or (2) requiring registration of individuals on a List, Database, Registry, or otherwise on the basis of religious affiliation, kinship, belief or practice; national origin; or ethnicity or (3) requires the detention, relocation or internment of individuals on the basis of religious affiliation, kinship, belief, or practice; national origin; or ethnicity. This includes a prohibition on making available Personal Information from any City database for the purposes mentioned in subsection (a), supra, including any City database maintained by a private vendor under contract with the City or any subcontractor thereof.*
- (c) This Chapter shall apply to all individuals, regardless of citizenship or immigration status, race, age, or any other factor.*
- (d) Nothing in this section prohibits an officer, employee, department, board, commission, or other entity of the City from sending to, or receiving from any local, state, or federal agency, aggregate information about religious affiliation, kinship, belief, or practice; national origin; or ethnicity within a geographic area, institution, category, or group, where such information is not associated with Personal Information, including but not limited to names, addresses, and telephone numbers, and cannot be used to identify individuals on the basis of religious affiliation, kinship, belief, or practice; national origin; or ethnicity.*
- (e) Nothing in this Chapter prohibits any officer, employee, department, board, commission, or other entity of the City from sending to, or receiving from a Federal agency charged with enforcement of Federal immigration law information regarding an individual's citizenship or immigration status, lawful or unlawful. "Information regarding an individual's citizenship or immigration status, lawful or unlawful" for purposes of this Chapter, shall be interpreted to be consistent with Section 1373 of Title 8 of the United States Code. This subsection shall expire by operation of law if a court of competent jurisdiction enters a judgment ruling 8 U.S.C. §1373(a) facially unconstitutional or unconstitutional as applied to the City.*

- (f) *Nothing in this Chapter prohibits the City from creating or maintaining a List, Database, or Registry that contains ethnicity or national origin information where such information is collected for purposes of complying with anti-discrimination laws or laws regarding the administration of public benefits, or for purposes of ensuring City programs adequacy serve the City's diverse communities, or where the City collects this information to ensure equal access to City programs, services, benefits, and contracts.*

Section 4: Enforcement and Reporting

- (a) *The [insert name of city agency or commission that could review compliance and reporting and then report a violation. In S.F. the entity tasked as such is the Human Rights Commission.] Director of the [insert name of agency or commission] or his or her designee ("the Director") shall review compliance with this Chapter. The Director may initiate and receive complaints regarding the violation of this Chapter. After conducting an investigation, the Director may issue findings regarding any alleged violation. If the Director finds that a violation occurred, the Director shall within 30 days of such findings, send a report of such finding to the Board of Supervisors, the Mayor and the head of any department involved in the violation or in which the violation occurred. All officers, employees, departments, board, commissions, and other entities of the City shall cooperate with the Director in any investigation of a violation of this Chapter.*
- (b) *By February 1 of each year, each City department shall submit to the Board of Supervisors a written, public report regarding the Department's compliance with this Chapter over the previous calendar year. This report at a minimum, must: (1) detail with specificity the steps the department has taken to ensure compliance with this Chapter; (2) disclose any issues with compliance, including any violations or potential violations of this Chapter; and (3) detail actions taken to cure any deficiencies with compliance.*

Section 5: Civil Action

- (a) *Cause of Action: The City shall be liable in a civil action for a violation of this section filed by either (1) an individual whose Personal Information has been disclosed in violation of this Chapter or (2) a non-profit organization exempt from taxation pursuant to Title 26, Section 501 of the United States Code, that has the defense of immigrants' and ethnic minorities' rights as a stated purpose in its articles of incorporation or bylaws.*
- (b) *Damages and Civil Penalties. If the City is found liable in a cause of action brought by an individual under this Chapter, the City shall be liable for (1) 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. If the City is found liable in a cause of action brought by an organization under this Chapter, the City shall be liable for a penalty no*

greater than \$5,000 per violation as determined by the court; provided that an organization may not recover a civil penalty if a court has already awarded a penalty to an individual or another organization arising out of the same violation. In determining the amount of the civil penalty in any action filed under this Chapter, the court shall consider: whether the violation was intentional or negligent and any prior violations of the Chapter by the City department that committed the violation. For purposes of this subsection, each disclosure of each individual's Personal Information shall be a separate violation.

- (c) Attorney's Fees and Costs. A court may 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 or entity bringing an action under this Section must first file a claim with the City within three years of the alleged violation.*
- (e) Exception. Any disclosure of Personal Information required by a legally enforceable subpoena, judicial warrant, or court order shall not give rise to a cause of action under this section.*

Resources

- San Francisco Anti-Registry Ordinance:
<https://sfgov.legistar.com/View.ashx?M=F&ID=4993086&GUID=51B68F57-BBA1-4A3C-86E8-FAA163017ED0>
- California Religious Freedom Act: state agencies: disclosure of religious affiliation information (SB 31):
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB31