

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

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AN ORDINANCE related to bias-free police; adding a new chapter to Title 14 of the Seattle Municipal Code to codify Seattle’s commitment to bias-free policing, requiring the Seattle Police Department to have bias-free policing policies and training, and to collect data to ensure that biased policing does not occur.

WHEREAS, on March 31, 2011, the United States Department of Justice (“DOJ”) notified the City of Seattle that it was initiating an investigation of an alleged pattern or practice of excessive force and discriminatory policing in the Seattle Police Department (“SPD”), pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. §14141; the anti-discrimination provisions of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d (“Safe Streets Act”); and Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d (“Title VI”); and

WHEREAS, on December 16, 2011, the DOJ Civil Rights Division issued a findings letter that concluded there were serious concerns on the issue of discriminatory policing issues related to biased policing within the SPD and while the great majority of the City’s police officers were honorable law enforcement professionals who risked their physical safety and well-being for the public good, a pattern of excessive force existed as a result of a subset of officers who used forced improperly; and

WHEREAS, under Washington State law, traffic violations may not be used as a pretext to investigate unrelated crimes for which the officer lacks reasonable suspicion. Pretext is stopping a suspect for an infraction to investigate criminal activity for which the officer has neither reasonable suspicion nor probable cause; and

1 WHEREAS, though the DOJ did not specifically reach a finding of discriminatory policing, the
2 DOJ did conclude that their investigation raised serious concerns about the practices that
3 could have a disparate impact on minority communities and such practices undermine
4 SPD's ability to build trust among segments of Seattle's diverse communities; and

5 WHEREAS, the DOJ did find that SPD's ability to maintain the trust of the community is
6 hindered by SPD's deficient policies addressing the risk of biased policing, inadequate
7 supervision and training of its officers on how to avoid biased policing practices, and the
8 failure to keep meaningful data that would permit SPD to evaluate and take action to
9 address allegations of biased free policing; and

10 WHEREAS, the DOJ entered into a settlement agreement with the City of Seattle regarding a
11 number of issues with SPD – including aspects of biased policing; and the specifics of
12 this agreement centered on the need for an enhanced bias-free policing policy, training on
13 that policy, and robust data collection and analysis to ensure that bias is absent from
14 policing in Seattle; and

15 WHEREAS, a new bias-free policing policy was approved by the monitor and federal judge and
16 went into effect January 1, 2015; and

17 WHEREAS, The City of Seattle is committed to providing bias-free policing in a professional,
18 nondiscriminatory, fair, and equitable manner for all its residents and visitors; NOW,
19 THEREFORE;

20 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

21 Section 1. A new Chapter 14.22 of the Seattle Municipal Code is added as follows:

22 **14.22.010 – Statement of purpose**

1 The City Council expresses concern that the policies, practices, training, and data
2 collection efforts related to bias-free policing in the Seattle Police Department appeared
3 problematic for the Department of Justice. Such practices can erode public trust and damage
4 efforts to make Seattle a safe city for all its residents and visitors. In addition to policy and
5 practice changes within the police department it is the Council’s intent to ensure protection of the
6 human rights as set forth in the Universal Declaration of Human Rights, endorsed by the Seattle
7 City Council in Resolution 31420 proclaiming Seattle to be a Human Rights City, to all persons
8 as they relate to biased policing activities and to require the policies, training, and data that
9 safeguards against such activities in the City of Seattle.

10 **14.22.020 – Definitions**

11 When the following words or their derivations are used in this section, the definitions
12 below apply:

13 “Biased policing” means selective enforcement or non-enforcement of the law, including
14 the selecting or rejecting of particular policing tactics or strategies, by a police officer, that is
15 based on race, ethnicity, religion, national origin, color, creed, age, alienage or citizenship status,
16 gender, gender identity, sexual orientation, disability, political ideology or housing status rather
17 reasonable suspicion grounded in specific and articulable facts, or probable cause, that the
18 individual has been or is about to be involved in a crime. Biased policing does not include using
19 race, ethnicity, or any other status in any reliable suspect’s description.

20 “Department” means the Seattle Police Department.

21 “Disabled” means a person who has a disability.

22 1. “Disability” means the presence of a sensory, mental, or physical impairment
23 that:

- 1 a. Is medically cognizable or diagnosable; or
- 2 b. Exists as a record or history; or
- 3 c. Is perceived to exist whether or not it exists in fact.

4 2. A disability exists whether it is temporary or permanent, common or
5 uncommon, mitigated or unmitigated.

6 3. For purposes of this definition, “impairment” includes, but is not limited to:

7 a. Any physiological disorder, or condition, cosmetic disfigurement, or
8 anatomical loss affecting one or more of the following body systems: neurological,
9 musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular,
10 reproductive, digestive, genitor-urinary, hemic and lymphatic, skin, and endocrine; or

11 b. any mental, developmental, traumatic, or psychological disorder,
12 including but not limited to cognitive limitation, organic brain syndrome, emotional or mental
13 illness, and specific learning disabilities.

14 “Gender identity” means a person's gender-related identity, appearance, or expression,
15 whether or not traditionally associated with one's biological sex or one's sex at birth, and
16 includes a person's attitudes, preferences, beliefs, and practices pertaining thereto.

17 “Housing Status” means the character of an individual’s residence or lack thereof,
18 whether publicly or privately owned, whether on a temporary or permanent basis, and includes
19 aspects of ownership, publicly assisted housing, use of the shelter system, or an individual’s
20 actual or perceived homelessness.

21 “Police Officer” or “Officer” means any law enforcement officer employed by the
22 Department, including supervisors and persons issued special police officer commissions.

1 “Political ideology” means any idea or belief, or coordinated body of ideas or beliefs,
2 relating to the purpose, conduct, organization, function or basis of government and related
3 institutions and activities, whether or not characteristic of any political party or group. This term
4 includes membership in a political party or group and includes conduct, reasonably related to
5 political ideology, which does not cause substantial and material disruption of the property rights
6 of the provider of a place of public accommodation.

7 “Sexual orientation” means actual or perceived male or female heterosexuality,
8 bisexuality, or homosexuality, and includes a person's attitudes, preferences, beliefs and practices
9 pertaining thereto.

10 “Terry Stop” means the temporary seizure of a person by a police officer based on a
11 reasonable suspicion, grounded in specific and articulable facts, that the person stopped has been
12 or is about to be involved in a crime.

13 “Traffic stop” means the stopping of an individual by a police officer based upon
14 probable cause that a traffic infraction occurred.

15 **14.22.030 – Prohibition on biased policing**

16 Police Officers shall be prohibited from making decisions or taking actions that are
17 influenced by unfair bias, prejudice, or discriminatory intent. Any person who is the victim of
18 biased policing shall be entitled to compensation as provided under this Chapter 14.22.

19 **14.22.040 – Enforcement by private persons and claims**

20 A. Not later than 180 days of the incident in which the individual alleges that biased
21 policing occurred, an individual who believes he or she is a victim of biased policing may file
22 either:

- 23 1. a civil complaint against the City of Seattle in Seattle Municipal Court or any

1 other court of competent jurisdiction under subsection 14.22.050, or

2 2. a claim against the City of Seattle with the Hearing Examiner under subsection
3 14.22.060.

4 B. Sections 14.22.050 and 14.22.060 shall be in addition to and shall not foreclose any
5 and all rights, procedures, and remedies available under the United States Constitution, Section
6 1983 of Title 42 of the United States Code, the Constitution of the State of Washington, and all
7 other federal law, state law, law of the City of Seattle, and all pre-existing civil remedies,
8 including monetary damages, created by statute, ordinance, or law, except that an individual may
9 not file to obtain appropriate relief against the City of Seattle in both Seattle Municipal Court or
10 any other court of competent jurisdiction under section 14.22.050 and with the Hearing
11 Examiner under section 14.22.060.

12 C. Proceedings under Sections 14.22.050 or 14.22.060 shall be conducted de novo.
13 Neither the fact of any discipline imposed on a police officer by the Chief of Police, nor the
14 recommendations of the Office of Professional Accountability sustaining or dismissing any
15 complaint in accordance with Chapter 3.28 shall constitute conclusive proof that biased policing
16 did or did not occur. Neither the filing of criminal or civil charges against the claimant or the
17 officer, nor the conviction or acquittal of the claimant or the officer in any such criminal or civil
18 proceedings shall constitute conclusive proof that biased policing either did or did not occur.

19 **14.22.050 – Enforcement by private persons**

20 In a civil action under this section 14.22.050, if the court finds that biased policing has
21 occurred, the court may grant relief, as it deems appropriate, any permanent or temporary
22 injunction, temporary restraining order, or other order, including an order enjoining the
23 defendant from engaging in such practice or ordering such affirmative action as may be

1 appropriate. The court may also award actual damages and allow reasonable attorney's fees and
2 costs including expert fees to the prevailing party.

3 **14.22.060 – Claims**

4 A. In a complaint under this section 14.22.060, copies of the claim must be served on the
5 Chief of Police and the City Attorney on or before the date the claim is filed with the Hearing
6 Examiner. Failure to timely file and serve such claim shall bar the claim. The claim shall
7 include a short and plain statement of the claim showing that the claimant is entitled to relief,
8 setting forth the facts and circumstances that support the claim. The Hearing Examiner shall fix
9 the time and place of the hearing and notify the claimant, the City Attorney, and the Chief of
10 Police thereof. The hearing shall be conducted in accordance with the procedures for hearing
11 contested cases in Chapter 3.02.

12 B. In any case brought under this section 14.22.060, the person making the claim bears
13 the burden of proving biased policing by a preponderance of the evidence. Biased policing may
14 be shown by direct evidence, indirect evidence, or a combination.

15 C. In any proceeding brought under this section 14.22.060, the Hearing Examiner may
16 allow a prevailing party an award of liquidated damages against The City in an amount up to
17 \$5,000 per violation. The Hearing Examiner may also award reasonable attorney's fees and
18 costs including expert fees. In the event the City of Seattle can prove that an action was brought
19 in bad faith, as a means to harass or intimidate, or the Hearing Examiner determines that the
20 action was frivolous, the City of Seattle may move, and the Hearing Examiner may grant,
21 sanctions and costs against the plaintiff, which may include attorneys' fees or other relief as the
22 Hearing Examiner deems necessary and appropriate.

1 D. Claims brought under this Section 14.21.060 shall not require the filing of a claim
2 under Chapter 5.24.

3 **14.22.070 – Police department requirements**

4 A. The Department shall maintain bias-free policies consistent with this Chapter.

5 B. The Department shall train all police officers on its bias-free policies; ensure that
6 every Police Officer understands that the City of Seattle does not tolerate biased policing
7 activities, and that everyone has a duty to report violations of bias-free policing policies.

8 C. The Department shall collect and compile the following data:

9 1. For Terry Stops:

- 10 a. Date, time, location of the stop;
- 11 b. To the extent possible, the name and serial numbers of all officers, from
12 any agency, present at any time during the stop;
- 13 c. Whether there is any in car video/audio of the stop, and if not, why not;
- 14 d. The individual's apparent race/ethnicity (using the NIBRS uniform
15 categories for race/ethnicity and including Latino as a separate category);
16 color, or national origin; gender or gender identity; and apparent age;
- 17 e. The reason for the stop, including whether a citation was issued or an
18 arrest made of any individual;
- 19 f. Whether a frisk was conducted as a result of the stop, and if so, a
20 description of facts justifying the frisk;
- 21 g. The result of any frisk, including whether any physical evidence was
22 seized, whether the search led to an arrest, and a description of facts
23 creating probable cause for the arrest;

1 h. Whether a person was moved or transported from the location of the
2 initial stop, and if so, why;

3 i. Whether a person stopped was specifically directed to assume any
4 posture or position, and if so, what posture or position and why;

5 j. The duration of the stop and an explanation of the factors that explain
6 the length of the stop.

7 2. For traffic stops:

8 a. Date, time, location of the stop;

9 b. The individual's apparent race/ethnicity (using the NIBRS uniform
10 categories for race/ethnicity and including Latino as a separate category);

11 color, or national origin; and gender or gender identity;

12 c. The reason for the stop, including whether a citation was issued or an
13 arrest made of any individual.

14 D. This data and data related to Police Officer-initiated enforcement practices that
15 include Violation of the Uniform Controlled Substances Act (VUCSA), prostitution, obstruction,
16 resisting arrest, driving crimes and infractions, pedestrian interference, illegal camping,
17 pedestrian violations, drinking in public, public consumption of marijuana, and public
18 urination/defecation shall be analyzed by a reputable third party to assess the effectiveness of the
19 Department's bias-free policing policies and training. The third party shall be selected by a
20 resolution passed by a majority of Seattle City Council.

21 E. The third party shall prepare and forward an annual report containing findings related
22 to the analysis of the data and Police Officer-initiated enforcement practices to the Seattle City

1 Council by December 10th each year unless the Councilmember with committee oversight of the
2 Department waives this reporting requirement.

3 **14.22.080 Biased policing compensation subfund**

4 There is established in the City Treasury, as a subfund of the General Fund, a biased
5 policing subfund, into which subfund shall be placed such amounts of money as shall be
6 appropriated by the City Council and such funds as are reimbursements from proper source funds
7 for payment of claims adjudicated in accordance with Section 14.21.050. If the subfund is
8 depleted during any budget year, unpaid adjudicated claims under Section 14.21.050 shall be
9 paid from the Judgment/Claims Subfund established under Section 5.24.010. If surplus funds
10 remain at the end of any budget year, such surplus funds shall be transferred to the operating
11 budget of the Seattle Police Department.

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1 Section 2. This ordinance shall take effect and be in force 30 days after its approval by
2 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it
3 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

4 Passed by the City Council the _____ day of _____, 2016,
5 and signed by me in open session in authentication of its passage this _____ day of
6 _____, 2016.

7 _____
8 President _____ of the City Council

9 Approved by me this _____ day of _____, 2016.

10 _____
11 Edward B. Murray, Mayor

12 Filed by me this _____ day of _____, 2016.

13 _____
14 Monica Martinez Simmons, City Clerk

15 (Seal)
16