

June 23, 2017 (Updated July 7, 2017)

MEMORANDUM

To: Gender Equity, Safe Communities and New Americans Committee
Council President Harrell
Councilmember Juarez

From: Asha Venkataraman, Council Central Staff

Subject: Council Bill 119018: Bias-Free Policing

Introduction

During the July 18, 2016 Education, Equity, and Governance committee meeting, Council President Harrell proposed to draft legislation that would codify the Seattle Police Department's (SPD) policies on bias-free policing and create a private right of action for persons alleging that they are a victim of biased policing. A draft bill (D1) was discussed in the Gender Equity, Safe Communities, and New Americans (GESCNA) committee on February 8, 2017. Councilmembers and the Executive raised concerns about the bill draft, which led to substantive revisions, resulting in Council Bill (CB) 119018 to be considered for a vote in the GESCNA committee on July 12, 2017.

This memorandum provides a short summary of CB 119018, outlines the issues raised during deliberations about D1, describes changes Council President Harrell, in consultation with Central Staff and the City Attorney's Office, decided to make to the draft bill and why. Attachment A to this memo contains a redline version comparing the text of D1 to CB 119018.

Bill Summary

CB 119018 is intended to do the following:

- Codify in the Seattle Municipal Code (SMC) SPD's policy prohibiting officers from engaging in biased policing.
- Create a new private right of action for an individual to file a claim for relief against the City based on any alleged biased police action(s) in a court of competent jurisdiction within three years of the alleged action.
- Establish the legal framework under which the claim for relief can be proven.
- Require SPD to: maintain bias-free policies; provide training on the policies; collect specific data regarding *Terry* and traffic stops consistent with consent decree requirements; and make such data available to an auditing and review entity.

Bill Revisions

This section addresses major issues identified by Councilmembers or Executive staff during the Committee's previous review of D1. For each issue, there is a description of the concern that was articulated and/or an excerpt of the text in D1, what revision (if any) was made in CB 119018, and an explanation of the approach in CB 119018.

Issue 1: Which protected classes are included in the definition of “biased policing” (Att. A: Page 4 Lines 4-12)

Text in D1: Section 14.22.020 - “...selective enforcement or non-enforcement of the law, including the selecting or rejecting of particular policing tactics or strategies, by a police officer, that is based on race, ethnicity, religion, national origin, color, creed, age, alienage or citizenship status, gender, gender identity, sexual orientation, disability, political ideology or housing status rather reasonable suspicion grounded in specific and articulable facts, or probable cause, that the individual has been or is about to be involved in a crime....”

Concern: The list of protected classes included may not cover all those persons the bill is intended to protect.

Revision in CB 119018: “Immigration status,” “ancestry,” and “sex” have been added and “housing status” and “gender” have been removed from the list of protected categories in the definition of biased policing in proposed Section 14.11.020.

Explanation: These changes make the list of protected classes more consistent with the classes currently protected in Title 14 of the SMC and cover the classes of persons that the bill is intended to protect.

Issue 2: Including non-enforcement of the law in the definition of “biased policing” (Att. A: Page 4 Lines 4-12)

Text in D1: Section 14.22.020 – Biased policing “means selective enforcement or non-enforcement of the law, including the selecting or rejecting of particular policing tactics or strategies... rather reasonable suspicion grounded in specific and articulable facts, or probable cause, that the individual has been or is about to be involved in a crime....”

Concern: Selective non-enforcement of the law or choosing particular tactics for the benefit of someone based on a protected class could be viewed as biased policing subject to a claim.

Revision in CB 119018: Proposed Section 14.11.020 (Att. A: Page 4 Lines 5-7) - “Biased policing” means selective enforcement or non-enforcement of the law, including the selecting or rejecting of particular policing tactics or strategies, by a police officer, the effect of which is to adversely affect or differentiate between or among individuals or groups of individuals... rather than reasonable suspicion grounded in specific and articulable facts, or probable cause, that the individual has been or is about to be involved in a crime....”

Explanation: By adding the statement that the discrimination is intended to prohibit adverse effects, a police action taken to benefit someone (for example, choosing not to arrest someone with a mental impairment and refer them for treatment) is no longer a source of liability.

Issue 3: The prohibition and standard of proof for a biased policing claim
(Att. A: Page 6 Lines 20-21)

Text in D1: Section 14.22.030 - “Police Officers shall be prohibited from making decisions or taking actions that are influenced by unfair bias, prejudice, or discriminatory intent.”

Concern: This is an inconsistent and vague standard compared to the existing standards used for equal protection, employment discrimination, and Washington Law Against Discrimination cases.

Revision in CB 119018:

- Proposed Section 14.11.030 (Att. A: Page 6 Line 21) - “Police officers shall not engage in biased policing.”
- Proposed Section 14.11.050.B (Att. A: Page 8 Lines 12-18) – “A claim of biased policing is established under this Section 14.11.050 when an individual brings an action demonstrating that a police officer acted with an intent to discriminate against the individual based on membership in a class enumerated in the definition of biased policing in Section 14.11.020 and the City is unable to show that the police officer had a legitimate, non-discriminatory reason for the act. If the City can show the officer had a legitimate, non-discriminatory reason for the act, the claim may still be established if the individual proves that the stated reason is a pretext for unlawful discrimination.”

Explanation: The prohibition has been separated from the standard of proof necessary to prove the claim. The standard of proof has been revised to reflect the standard for proving an equal protection claim with a burden shifting approach to remain consistent with state and federal law.

Issue 4: Length of the 180-day period of time to file a claim
(Att. A: Page 7 Line 4)

Concerns: A 180-day statute of limitations may be too short to allow a claimant to use evidence produced during an Office of Police Accountability (OPA) investigation. The bill is also unclear as to whether a claimant is also precluded from filing a civil action under other statutes after 180 days if they do not file under this claim.

Revision in CB 119018: The period of time for a claimant to file a biased policing claim is extended from 180 days to 3 years in proposed Section 14.11.040.A.

Explanation: The extension was made to match similar claims such as tort claims. The extension will also allow time for an OPA investigation to be completed so evidence may be used in the court proceeding. In addition, the bill was never intended to remove from the claimant any of their rights provided under state or federal law (see text in proposed Section 14.11.040.B), so the ending of the 3-year statute of limitation applies only to the City claim.

Issue 5: The ability of Seattle Municipal Court as a court of limited jurisdiction to hear a biased policing claim
(Att. A: Page 7 Lines 6-9)

Text in D1: Section 14.22.040.A.1 - "...a victim of biased policing may file a civil complaint against the City of Seattle in Seattle Municipal Court or any other court of competent jurisdiction...."

Concern: The bill does not address whether Seattle Municipal Court has the jurisdiction to hear this claim.

Revision in CB 119018: Proposed Section 14.11.040.A - "...a victim of biased policing...may file a civil complaint against the City of Seattle in a court of competent jurisdiction...."

Explanation: Although it is a court of limited jurisdiction and state statute allows courts of limited jurisdiction to hear civil claims, Seattle Municipal Court does not typically accept civil claims. Allowing a claimant to file in any court of competent jurisdiction without specifically calling out Seattle Municipal Court makes it clearer that the choice of court is at the claimant's discretion, and the court will decide whether to accept the claim or not.

Issue 6: How OPA decisions will be used under the new private right of action
(Att. A: Page 7 Line 20 through Page 8 Line 8)

Text in D1: Section 14.22.040.C – “Proceedings under Sections 14.22.050 or 14.22.060 shall be conducted de novo. Neither the fact of any discipline imposed on a police officer by the Chief of Police, nor the recommendations of the Office of Professional Accountability sustaining or dismissing any complaint in accordance with Chapter 3.28 shall constitute conclusive proof that biased policing did or did not occur. Neither the filing of criminal or civil charges against the claimant or the officer, nor the conviction or acquittal of the claimant or the officer in any such criminal or civil proceedings shall constitute conclusive proof that biased policing either did or did not occur.”

Concerns: The bill is not clear about the legal effect of a court decision on an OPA investigation or the effects on the court claim of OPA sustaining or dismissing a complaint or imposing or failing to impose discipline on an officer. The “de novo” language is confusing.

Revision in CB 119018: Proposed Section 14.11.040.C - “Though the presence or absence of any discipline imposed on a police officer by the Chief of Police or the recommendations of the Office of Police Accountability (OPA) sustaining or dismissing any complaint in accordance with Title III may be admitted by a court of competent jurisdiction as evidence, it shall not constitute conclusive proof that biased policing did or did not occur. Though the findings and decisions of a court of competent jurisdiction regarding a claim filed under Section 14.11.040 may be considered in a disciplinary proceeding, they shall not constitute conclusive proof in such proceeding that biased policing either did or did not occur.”

Explanation: Removing the “de novo” language removes any confusion associated with that term as a term of art in the judicial system. In addition, the language now makes clear that the court might allow the presence or absence of discipline at the OPA level as evidence, but such evidence is not determinative of a finding at the judicial level; conversely, an OPA investigation might consider the court finding as evidence, but the court finding is not determinative of whether discipline is imposed.

Issue 7: Applicability and inclusion of the claims requirement in SMC 5.24
(Att. A: Page 8 Lines 10-11)

Concern: The bill is unclear as to whether SMC 5.24 requires a claimant to file a claim for injuries or damages with the City before filing a biased policing claim. Other claims against the City require such a filing.

Revision in CB 119018: Proposed Section 14.11.050.A (Att. A: Page 8 Lines 10-11) is added to explicitly address the filing requirement, requiring a claimant to file an injuries or damages claim and wait 60 days before filing a biased policing claim based on the same allegations against the City.

Explanation: There is no reason for this claim to be treated differently than any other claim for injuries or damages that must adhere to SMC 5.24, so it has been made consistent with the requirements for other claims against the City.

Issue 8: The kinds of interactions with the police that can be a basis to file a claim
(Att. A: Page 7 Lines 4-7)

Text in D1: Section 14.22.040.A - "...an individual who believes he or she is a victim of biased policing may file..."

Concern: Because the definitions section only defined *Terry*¹ stops and traffic stops and the language establishing the claim is not detailed, it is unclear as to whether a claimant could file a biased policing claim about stops other than those two types.

Revision in CB 119018:

- Proposed Section 14.11.040.A (Att. A: Page 7 Lines 4-7) – "...a person who believes they are a victim of biased policing based on any interaction with a Seattle police officer, including but not limited to a social contact, a Terry stop, or a traffic stop, may file a civil complaint..."
- Definitions of "seizure" and "social contact" have been added to proposed Section 14.11.020 (Att. A: Page 6 Lines 6-8; 12-13)

Explanation: A statement on the basis for the claim and definitions of social contact and seizure are added to make clear that any police interaction can give rise to a claim.

¹ A *Terry* stop is the temporary seizure of a person by a police officer based on a reasonable suspicion, grounded in specific and articulable facts, that the person stopped has been or is about to be involved in a crime.

Issue 9: Including the ability to file a claim with the Hearing Examiner in addition to filing a claim in a court of competent jurisdiction
(Att. A: Page 9 Line 5 through Page 10 Line 4)

Concerns: The Hearing Examiner does not normally hear cases of first impression, usually just appeals of administrative claims, so this would be a new type of case for that office. In addition, having such a claim go before the Hearing Examiner would implicate legal issues such as the officer's due process, *res judicata*, and judicial and collateral estoppel.

Revision in CB 119018: The avenue for relief through the Hearing Examiner and all associated references have been removed.

Explanation: The original intent of the bill was to provide a simple and straightforward way for claimants to use a City cause of action for a claim of biased policing, and creating that cause of action in a court of competent jurisdiction accomplishes that goal without involving the Hearing Examiner.

Issue 10: The inclusion of anti-SLAPP²-like language
(Att. A: Page 9 Line 19 through Page 10 Line 2)

Text in D1: Section 14.22.060.C – “In the event the City of Seattle can prove that an action was brought in bad faith, as a means to harass or intimidate, or the Hearing Examiner determines that the action was frivolous, the City of Seattle may move, and the Hearing Examiner may grant, sanctions and costs against the plaintiff, which may include attorneys’ fees or other relief as the Hearing Examiner deems necessary and appropriate.”

Concerns: This language can be abused by defendants against plaintiffs who file good faith claims.

Revision in CB 119018: The language has been removed.

Explanation: Civil rules of procedure requiring that claims be made in good faith is sufficient protection for defendants against frivolous or malicious claims by a claimant.

² SLAPP is an acronym meaning “strategic lawsuit against public participation.” They are suits brought by plaintiffs for malicious or frivolous reasons to chill free speech. Legislation put in place to curb such filings are anti-SLAPP statutes, and can impose penalties for filing such a suit.

Issue 11: Inclusion of NIBRS (National Incident-Based Reporting System) in data collection (Att. A: Page 10 Lines 16 and 17; Page 11 Lines 12-13)

Text of D1: Section 14.22.070.C.1.d; C.2.b – “The Department shall collect and compile the following data: ...The individual’s apparent race/ethnicity (using the NIBRS uniform categories for race/ethnicity and including Latino as a separate category); color, or national origin; gender or gender identity; and apparent age;”

Concern: NIBRS is a national system specific to collection of limited data, and SPD is interested in collecting more data with more flexibility than NIBRS allows.

Revision in CB 119018: The NIBRS language has been removed

Explanation: Removal of the NIBRS requirement will let SPD collect more data and use and integrate that data more effectively with their own systems.

Issue 12: Third party chosen to collect and assess data (Att. A: Page 11 Line 19 through Page 12 Line 4)

Text of D1: Section 14.22.070.D - “This data and data related to Police Officer-initiated enforcement practices that include Violation of the Uniform Controlled Substances Act (VUCSA)...shall be analyzed by a reputable third party to assess the effectiveness of the Department’s bias-free policing policies and training. The third party shall be selected by a resolution passed by a majority of Seattle City Council.”

Concerns: The requirement for a third party could be in conflict with the provisions in the police accountability legislation that creates an Office of the Inspector General for Public Safety and assigns responsibilities around data collection and assessment to that office and OPA.

Revision in CB 119018:

- Recital added (Att. A: Page 3 Lines 6-8) - “WHEREAS, the Council recognizes the importance of collecting and analyzing data to inform policy decisions, decide how to allocate resources in a standardized and consistent way, and realize critical racial equity goals;”
- Proposed Section 14.11.060.D (Att. A: Page 11 Lines 17-19) – “Data collected under subsection 14.11.060.C shall be made available to and may be analyzed by the OPA or its successor and the Office of the Inspector General for Public Safety or its successor, consistent with the duties of these entities set forth in Section 3.29.”

Explanation: The language has changed to align with the police accountability legislation and reference the Office of the Inspector General for Public Safety and the OPA and their successors.

Issue 13: Types of data to be collected and assessed
(Att. A: Page 11 Line 19 through Page 12 Line 4)

Text of D1: Section 14.22.070.D - “This data and data related to Police Officer-initiated enforcement practices that include Violation of the Uniform Controlled Substances Act (VUCSA), prostitution, obstruction, resisting arrest, driving crimes and infractions, pedestrian interference, illegal camping, pedestrian violations, drinking in public, public consumption of marijuana, and public urination/defecation shall be analyzed....”

Concern: The VUCSA and other officer-initiated enforcement crimes outlined in this section are unrelated to the bill’s data collection requirements of traffic and *Terry* stop information.

Revision in CB 119018: Proposed Section 14.11.060.D (Att. A: Page 11 Lines 17-19) – “Data collected under subsection 14.11.060.C shall be made available to and may be analyzed by the OPA or its successor and the Office of the Inspector General for Public Safety or its successor, consistent with the duties of these entities set forth in Section 3.29.”

Explanation: The removal of the VUCSA and other non-*Terry* or -traffic stop data makes the data collection and assessment section consistent with the data collection requirements previously outlined in the bill. In addition, those crimes came from the disparate impact sections of the SPD policy on biased policing, and this bill is not intended to deal with disparate impact issues.

Issue 14: Need for a separate subfund to pay out claims
(Att. A: Page 12 Lines 9-17)

Concern: Whether a separate subfund to pay out claims is necessary when the City already uses the Judgment and Claims Subfund for the same purpose.

Revision in CB 119018: This language has been removed.

Explanation: The separate subfund language was included to provide an additional mechanism by which SPD would be accountable for bias-free policing – the original language would have added funds to the SPD budget if the allocated amount to pay out claims was not fully expended every year. The formation of the claim and public accountability was ultimately decided to be sufficient for accountability on bias-free policing in this bill.

Attachment:

A. Redline Comparison of D1 to CB 119018

cc: Kirstan Arestad, Central Staff Director
Dan Eder, Central Staff Deputy Director

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CITY OF SEATTLE
ORDINANCE _____
COUNCIL BILL _____

~~Click here to enter text...~~ title

AN ORDINANCE ~~related~~relating to bias-free ~~police~~policing; adding a new ~~chapter to~~
~~Title~~Chapter 14 ~~of, 11, consisting of Sections 14.11.010, 14.11.020, 14.11.030, 14.11.040,~~
14.11.050, and 14.11.060, to the Seattle Municipal Code to codify Seattle’s commitment
to bias-free policing, ~~requiring~~require the Seattle Police Department to have bias-free
policing policies and training, ~~and to create an enforcement mechanism against biased~~
policing, and collect data to help ensure that biased policing does not occur.

..body

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 that, 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 ~~force~~force improperly; and

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

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

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

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

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

21 WHEREAS, under Washington State law, traffic violations may not be used as a pretext to
22 investigate unrelated crimes for which the officer lacks reasonable suspicion. Pretext in

1 this context is stopping a suspect for an infraction to investigate criminal activity for
2 which the officer has neither reasonable suspicion nor probable cause; and

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

6 WHEREAS, the Council recognizes the importance of collecting and analyzing data to inform
7 policy decisions, decide how to allocate resources in a standardized and consistent way,
8 and realize critical racial equity goals; NOW, THEREFORE,

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

10 Section 1. A new Chapter 14.22 ~~of 11 is added to~~ the Seattle Municipal Code ~~is added as~~
11 follows:

12 **14.2211.010 —Statement of ~~p~~Purpose**

13 The City Council expresses concern that the policies, practices, training, and data collection
14 efforts related to bias-free policing in the Seattle Police Department appeared problematic for the
15 Department of Justice. ~~Such practices~~ Biased policing can erode public trust and damage efforts
16 to make Seattle a safe city for all its residents and visitors. In addition to policy and practice
17 changes within the ~~police department~~ Seattle Police Department, it is the Council's intent to
18 ensure protection of the human rights as set forth in the Universal Declaration of Human Rights,
19 endorsed by the Seattle City Council in Resolution 31420 proclaiming Seattle to be a Human
20 Rights City, to all persons as they relate to biased policing activities and to require the policies,
21 training, and data that safeguards against such activities in the City of Seattle.

22 **14.2211.020 —Definitions**

1 ~~When~~The definitions in this Section 14.11.020 provide the ~~following words or their derivations~~
2 ~~are~~meaning of terms used in this ~~section,~~Chapter 14.11, except as otherwise provided or as the
3 ~~definitions below apply~~context may otherwise clearly require:

4 “Biased policing” means selective enforcement or non-enforcement of the law, including
5 the selecting or rejecting of particular policing tactics or strategies, by a police officer, the effect
6 of which is to adversely affect or differentiate between or among individuals or groups of
7 individuals, that is based on~~because of~~ race, ethnicity, ancestry, religion, national origin, color,
8 creed, age, alienage or citizenship status, gender~~immigration status,~~ sex, gender identity, sexual
9 orientation, disability, or political ideology ~~or housing status~~ rather than reasonable suspicion
10 grounded in specific and articulable facts, or probable cause, that the individual has been or is
11 about to be involved in a crime. Biased policing does not include using race, ethnicity, color, or
12 any other status in any reliable suspect’s description.

13 “Department” means the Seattle Police Department.

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

15 ~~1.~~ “Disability” means the presence of a sensory, mental, or physical impairment
16 that:

17 ~~a.~~ Is is medically cognizable or diagnosable; or

18 ~~b.~~ Exists exists as a record or history; or

19 ~~c.~~ Is is perceived to exist whether or not it exists in fact.

20 ~~2.~~ A disability exists whether it is temporary or permanent, common or
21 uncommon, mitigated or unmitigated~~-,~~ whether or not it limits the ability to work generally or

1 work at a particular job, or whether or not it limits any other activity within the scope of this

2 Chapter 14.08. For purposes of this definition, “impairment” includes, but is not limited to:

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

4 ~~_____ a. _____~~ 1. Any physiological disorder, or condition, cosmetic
5 disfigurement, or anatomical loss affecting one or more of the following body systems:
6 neurological, musculoskeletal, special sense organs, respiratory, including speech organs,
7 cardiovascular, reproductive, digestive, genitor-urinary, hemic and lymphatic, skin, and
8 endocrine; or

9 ~~_____ b. any~~ 2. Any mental, developmental, traumatic, or psychological disorder,
10 including but not limited to cognitive limitation, organic brain syndrome, emotional or mental
11 illness, and specific learning disabilities.

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

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

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

21 “Political ideology” means any idea or belief, or coordinated body of ideas or beliefs,
22 relating to the purpose, conduct, organization, function or basis of government and related

1 institutions and activities, whether or not characteristic of any political party or group. ~~This~~
2 ~~term~~ Political ideology includes membership in a political party or group and includes conduct,
3 reasonably related to political ideology, ~~which~~ that does not ~~cause substantial and material~~
4 ~~disruption~~ threaten the safety of the ~~property rights~~ officers or members of the ~~provider of a place~~
5 ~~of public accommodation;~~ or attempt to incite others to violence.

6 “Seizure” means when, considering all the circumstances, a person’s freedom of
7 movement is restrained and the person would not believe the person is free to leave or decline a
8 request due to an officer's use of force or display of authority.

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

12 “Social contact” means contact between a police officer and a person that does not
13 constitute a seizure.

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

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

19 **14.2211.030 – Prohibition on biased policing**

20 ~~Police Officers shall be prohibited from making decisions or taking actions that are influenced by~~
21 ~~unfair bias, prejudice, or discriminatory intent.~~ Police officers shall not engage in biased policing.

1 Any person who is the victim of biased policing shall be entitled to compensation as provided
2 under this Chapter 14.2211.

3 **14.2211.040 – Enforcement by private persons ~~and claims~~**

4 A. Not later than ~~180 days~~three years from the occurrence of the ~~incident in which the~~
5 ~~individual alleges that~~alleged biased policing ~~occurred, an individual, a person~~ who believes ~~he~~
6 ~~or she is~~they are a victim of biased policing based on any interaction with a Seattle police officer,
7 including but not limited to a social contact, a Terry stop, or a traffic stop, may file ~~either:~~

8 ~~1. a civil complaint against the City of Seattle in Seattle Municipal Court or any~~
9 ~~other~~ a court of competent jurisdiction under ~~subsection~~Section 14.2211.050, ~~or,~~

10 ~~2. a claim against the City of Seattle with the Hearing Examiner under subsection~~
11 ~~14.22.060.~~

12 B. ~~Sections~~Section 14.2211.050 ~~and 14.22.060~~ shall be in addition to and shall not
13 foreclose any and all rights, procedures, and remedies available under the United States
14 Constitution, Section 1983 of Title 42 of the United States Code, the Constitution of the State of
15 Washington, and all other federal law, state law, law of the City of Seattle, and all pre-existing
16 civil remedies, including monetary damages, created by statute, ordinance, or law, ~~except that an~~
17 ~~individual may not file to obtain appropriate relief against the City of Seattle in both Seattle~~
18 ~~Municipal Court or any other court of competent jurisdiction under section 14.22.050 and with~~
19 ~~the Hearing Examiner under section 14.22.060.~~

20 C. ~~Proceedings under Sections 14.22.050 or 14.22.060 shall be conducted de novo.~~
21 ~~Neither~~Though the ~~fact~~presence or absence of any discipline imposed on a police officer by the
22 Chief of Police, ~~nor~~ or the recommendations of the Office of ~~Professional~~Police Accountability

1 (OPA) sustaining or dismissing any complaint in accordance with ~~Chapter 3.28 shall~~ Title III may
2 be admitted by a court of competent jurisdiction as evidence, it shall not constitute conclusive
3 proof that biased policing did or did not occur. ~~Neither~~ Though the ~~filing of criminal or civil~~
4 ~~charges against the claimant or the officer, nor the conviction or acquittal~~ findings and decisions
5 ~~of the claimant or the officer~~ a court of competent jurisdiction regarding a claim filed under
6 Section 14.11.040 may be considered in any such criminal or civil proceedings a disciplinary
7 proceeding, they shall not constitute conclusive proof in such proceeding that biased policing
8 either did or did not occur.

9 **14.2211.050 Civil complaints**

10 A. Claims under this Section 14.11.050 are subject to the requirements under Chapter
11 5.24.

12 B. A claim of biased policing is established under this Section 14.11.050 when an
13 individual brings an action demonstrating that a police officer acted with an intent to
14 discriminate against the individual based on membership in a class enumerated in the definition
15 of biased policing in Section 14.11.020 and the City is unable to show that the police officer had
16 a legitimate, non-discriminatory reason for the act. If the City can show the officer had a
17 legitimate, non-discriminatory reason for the act, the claim may still be established if the
18 individual proves that the stated reason is a pretext for unlawful discrimination.

19 C. — ~~Enforcement by private persons~~ The standard of proof for establishing a violation
20 of Section 14.11.030 is by a preponderance of the evidence.

21 D. In a civil action under this ~~section~~ Section 14.2211.050, if the court finds that biased
22 policing has occurred, the court may grant relief, as it deems appropriate, any permanent or

1 temporary injunction, temporary restraining order, or other order, including an order enjoining
2 the defendant from engaging in such practice or ordering such affirmative action as may be
3 appropriate. The court may also award actual damages and allow reasonable attorney's fees and
4 costs including expert fees to the prevailing party.

5 **14.2211.060 —Claims**

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

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

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

1 ~~sanctions and costs against the plaintiff, which may include attorneys' fees or other relief as the~~
2 ~~Hearing Examiner deems necessary and appropriate.~~

3 ~~D. Claims brought under this Section 14.21.060 shall not require the filing of a claim~~
4 ~~under Chapter 5.24.~~

5 **~~14.22.070—Police department~~ Department requirements**

6 A. The Department shall maintain bias-free policies consistent with this Chapter 14.11.

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

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

11 1. For Terry ~~S~~stops:

12 a. Date, time, and location of the stop;

13 b. To the extent possible, the name and serial numbers of all officers, from
14 any agency, present at any time during the stop;

15 c. Whether there is any in car video/audio of the stop, and if not, why not;

16 d. The individual's apparent race/ethnicity, ~~(using the NIBRS uniform~~
17 ~~categories for race/ethnicity and including Latino as a separate category);~~ color, or national
18 origin; gender or gender identity; and apparent age;

19 e. The reason for the stop, including whether a citation was issued or an
20 arrest made of any individual;

21 f. Whether a frisk was conducted as a result of the stop, and if so, a
22 description of facts justifying the frisk;

1 g. The result of any frisk, including whether any physical evidence was
2 seized, whether the search led to an arrest, and a description of facts creating probable cause for
3 the arrest;

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

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

8 j. The duration of the stop and an explanation of the factors that explain
9 the length of the stop.

10 2. For traffic stops:

11 a. Date, time, and location of the stop;

12 b. The individual's apparent race/ethnicity, ~~(using the NIBRS uniform~~
13 ~~categories for race/ethnicity and including Latino as a separate category);~~ color, or national
14 origin; and gender or gender identity; and

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

17 D. Data collected under subsection 14.11.060.C shall be made available to and
18 may be analyzed by the OPA or its successor and the Office of the Inspector General for Public
19 Safety or its successor, consistent with the duties of these entities set forth in Section 3.29. This
20 ~~data and data related to Police Officer-initiated enforcement practices that include Violation of~~
21 ~~the Uniform Controlled Substances Act (VUCSA), prostitution, obstruction, resisting arrest,~~
22 ~~driving crimes and infractions, pedestrian interference, illegal camping, pedestrian violations,~~

1 ~~drinking in public, public consumption of marijuana, and public urination/defecation shall be~~
2 ~~analyzed by a reputable third party to assess the effectiveness of the Department's bias-free~~
3 ~~policing policies and training. The third party shall be selected by a resolution passed by a~~
4 ~~majority of Seattle City Council.~~

5 ~~E. The third party shall prepare and forward an annual report containing findings related~~
6 ~~to the analysis of the data and Police Officer initiated enforcement practices to the Seattle City~~
7 ~~Council by December 10th each year unless the Councilmember with committee oversight of the~~
8 ~~Department waives this reporting requirement.~~

9 **~~14.22.080 Biased policing compensation subfund~~**

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

