



Legislation Text

File #: CB 119018, Version: 2

CITY OF SEATTLE
ORDINANCE _____
COUNCIL BILL _____

AN ORDINANCE relating to bias-free policing; adding a new Chapter 14.11, 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, require the Seattle Police Department to have bias-free policing policies and training, create an enforcement mechanism against biased policing, and collect data to help 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 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 improperly; and

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

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

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

WHEREAS, a new bias-free policing policy was approved by the monitor and federal judge and went into effect January 1, 2015; 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 in this context is stopping a suspect for an infraction to investigate criminal activity for which the officer has neither reasonable suspicion nor probable cause; and

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

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; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. A new Chapter 14.11 is added to the Seattle Municipal Code as follows:

14.11.010 Statement of Purpose

The City Council expresses concern that the policies, practices, training, and data collection efforts related to bias-free policing in the Seattle Police Department appeared problematic for the Department of Justice. Biased

policing can erode public trust and damage efforts to make Seattle a safe city for all its residents and visitors. In addition to policy and practice changes within the Seattle Police Department, it is the Council's intent to ensure protection of the human rights as set forth in the Universal Declaration of Human Rights, endorsed by the Seattle City Council in Resolution 31420 proclaiming Seattle to be a Human Rights City, to all persons as they relate to biased policing activities and to require the policies, training, and data that safeguards against such activities in the City of Seattle.

14.11.020 Definitions

The definitions in this Section 14.11.020 provide the meaning of terms used in this Chapter 14.11, except as otherwise provided or as the context may otherwise clearly require:

“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, because of race, ethnicity, ancestry, religion, national origin, color, creed, age, alienage or citizenship status, immigration status, sex, gender identity, sexual orientation, disability, or political ideology 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. Biased policing does not include using race, ethnicity, color, or any other status in any reliable suspect's description.

“Department” means the Seattle Police Department.

“Disabled” means a person who has a disability.

“Disability” means the presence of a sensory, mental, or physical impairment that: is medically cognizable or diagnosable; or exists as a record or history; or is perceived to exist whether or not it exists in fact. A disability exists whether it is temporary or permanent, common or uncommon, mitigated or unmitigated, whether or not it limits the ability to work generally or work at a particular job, or whether or not it limits any other activity within the scope of this Chapter 14.11. For purposes of this definition, “impairment” includes, but

is not limited to:

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

2. Any mental, developmental, traumatic, or psychological disorder, including but not limited to cognitive limitation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

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

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

“Political ideology” means any idea or belief, or coordinated body of ideas or beliefs, relating to the purpose, conduct, organization, function or basis of government and related institutions and activities, whether or not characteristic of any political party or group. Political ideology includes membership in a political party or group and includes conduct, reasonably related to political ideology, that does not threaten the safety of the officers or members of the public; or attempt to incite others to violence.

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

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

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

“Terry stop” means 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.

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

14.11.030 Prohibition on biased policing

Police officers shall not engage in biased policing. Any person who is the victim of biased policing shall be entitled to compensation as provided under this Chapter 14.11.

14.11.040 Enforcement by private persons

A. Not later than three years from the occurrence of the alleged biased policing, persons who believe they are a victim of biased policing based on any interaction with a Seattle police officer may file a civil complaint against the City of Seattle in a court of competent jurisdiction under Section 14.11.050.

B. Section 14.11.050 shall be in addition to and shall not foreclose any and all rights, procedures, and remedies available under the United States Constitution, Section 1983 of Title 42 of the United States Code, the Constitution of the State of Washington, and all other federal law, state law, law of the City of Seattle, and all pre-existing civil remedies, including monetary damages, created by statute, ordinance, or law.

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.

14.11.050 Civil complaints

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

B. 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.

C. The standard of proof for establishing a violation of Section 14.11.030 is by a preponderance of the evidence.

D. In a civil action under this Section 14.11.050, if the court finds that biased policing has occurred, the court may grant relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order, including an order enjoining the defendant from engaging in such practice or ordering such affirmative action as may be appropriate. The court may also award actual damages and allow reasonable attorney's fees and costs including expert fees to the prevailing party.

14.11.060 Department requirements

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

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

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

1. For Terry stops:

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

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

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

- d. The individual's apparent race/ethnicity, color, or national origin; gender or gender identity; and apparent age;
- e. The reason for the stop, including whether a citation was issued or an arrest made of any individual;
- f. Whether a frisk was conducted as a result of the stop, and if so, a description of facts justifying the frisk;
- g. The result of any frisk, including whether any physical evidence was seized, whether the search led to an arrest, and a description of facts creating probable cause for the arrest;
- h. Whether a person was moved or transported from the location of the initial stop, and if so, why;
- i. Whether a person stopped was specifically directed to assume any posture or position, and if so, what posture or position and why; and
- j. The duration of the stop and an explanation of the factors that explain the length of the stop.

2. For traffic stops:

- a. Date, time, and location of the stop;
- b. The individual's apparent race/ethnicity, color, or national origin; and gender or gender identity; and
- c. The reason for the stop, including whether a citation was issued or an arrest made of any individual.

D. 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.

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

Passed by the City Council the _____ day of _____, 2017, and signed by me in open session in authentication of its passage this _____ day of _____, 2017.

President _____ of the City Council

Approved by me this _____ day of _____, 2017.

Edward B. Murray, Mayor

Filed by me this _____ day of _____, 2017.

Monica Martinez Simmons, City Clerk

(Seal)