March 3, 2020

Betty C. Andrews, President
Iowa-Nebraska NAACP State Area Conferences of Branches
1620 Pleasant Street, Suite 210
Des Moines, IA 50310

Dear Ms. Andrews:

Thank you very much for meeting with me these last several weeks and for the solid input and engagement on such very important issues. I’m happy to continue meeting with you and community members in moving these issues forward, and consider the important ordinance amendments, policies and processes we’ve identified as key first steps that will hopefully move the results—and continuing dialogue—forward as we work together to make Des Moines the best city it can be.

While I understand that we’re not yet on the same page with respect to all of these important issues, I’d like to emphasize that the City and its administration has moved meaningfully and comprehensively from its initial positions and documents as concerns of various community members have been shared with us. Many of these changes in position have been met with—at least limited—approval in our discussions. For example:

- We have agreed to place racial profiling in the ordinance as a prohibited municipal practice.
- We have agreed to develop a Request for Proposals (RFP) to identify best practices for research and data collection methods concerning law and code enforcement performance on providing fair and impartial City services and to establish metrics that allow for review and recommendations on such performance.
- To keep the process moving—because we understand the importance to the community—the RFP authorization includes the ability for the City Manager to employ the successful proposer to do the research and data collection without further action of Council.
- We’ve also agreed to lobby for state legislation to authorize the State Department of Transportation (DOT) to require race and ethnicity to be included in the Iowa Driver’s License database for objectivity and accuracy in collecting data. Toward that end, I have even engaged the DOT director personally to see if there is an opportunity for rule changes that might allow such objective data collection more quickly, short of legislation.

We are entirely willing and open to continuing the dialogue on establishing best practices in operating the City. In fact, we embrace it and I have personally tried to make that the hallmark of my administration. While the dialogue can and should continue, we are moving ahead with what Council has directed previously, which is a city-wide focus, not directed solely at the police department. Many of the community’s submitted proposals are focused solely on the police department, but we had a unanimous city council that did not embrace such an approach, and instead directed the work be city wide. Six of those members are still seated and that direction has never changed.
While I am happy and willing to continue the dialogue on this issue, the depth and breadth of that will be substantially improved by recognition from the community that these are solid initial steps. If the stance of the community is that this is fine as far as it goes, but members would like to see it go farther, that will be helpful in continuing meaningful dialogue on a myriad of subjects. If the position is that everything is a failure unless the representatives we’ve met with get exactly what they want at this point in time, before we’ve done the RFP on data collection and established best practices, then the scope of further dialogue likely becomes more limited.

The expected future work of a consultant presents an opportunity to evaluate best practices ahead of proposing specific data collection methods in ordinance. I am willing to use much of the community’s proposed ordinance language around data collection as a framework for the consultant to provide guidance and recommendations as part of an informed decision-making process. Because of the perceived disparate use of pretextual stops, I am also willing to consider a similar approach regarding pretextual stops. As I’ve consistently explained from the beginning, the City is opposed to discrimination and racial profiling in its policing, but is not going to prohibit pretextual stops—the use of a traffic stop based on a legitimate police observation of a traffic violation. Both the United States and Iowa Supreme Courts have upheld such stops as constitutional under the federal and state constitutions. Instead of including pretextual stop language in the current draft ordinance, I will support a consultant evaluating the feasibility and anticipated effects of such proposed language and providing best practice recommendations for the City to consider. It is important that any ordinance language meet the standard of intent and enforceability. We will not randomlyforeclose this valuable and legitimate law enforcement tool.

There are other areas where the City will try to be further accommodating in the materials submitted to Council in March. We will be offering the resolution directing staff to create an RFP to determine best practices for data collection and authorizing the City Manager to proceed with the process without further Council action. Per the community’s suggestion, we will include in the RFP that the successful proposer must include at least one (1) stakeholder meeting—more if they deem it a best practice—to engage with the public and obtain its input. This stakeholder meeting will, of course, include community representatives. We will also require the successful proposer to develop and submit recommendations providing transparency and accessibility of the data—as allowed by law—including both online and written reports.

Additionally, while we are not inclined to change the name of the committee to include police or law enforcement in the title, we are open to a different name than “Policy and Practice Review Committee” if you have other suggestions that don’t isolate the police department or law enforcement. We will not be recommending to Council to make it an appointed body, but we are open to including an individual within the suggested ages of 16-24 years as a fresh perspective on what is encountered by the public and the particularized concerns of that age group. While the group will remain administratively appointed and operative, I will commit to meeting no less than annually—and likely more frequently if the meetings are productive—with community members to review the activities and progress of the committee. This discussion would include, as requested, review of data collected and utilized and continued discussions of best practices to prevent profiling.

We will continue with our resolution for no less than biennial training for all City staff. We have clarified the resolution to make clear that the training includes best practices nationally concerning
implicit bias, de-escalation and cultural competence training. Further, the resolution now clarifies that the training—in following national best practices—will be full day and half day training, or more lengthy, if national best practices suggest those are the appropriate training lengths. As we discussed at our last meeting, the Police Department already conducts its related training annually. We will be pursuing annual training for our Code Enforcement staff as well.

The Des Moines Police Department already embraces community policing through all its community programs and training in which it is currently involved. We are open to improved community policing as well. We are open to further discussions regarding Iowa Code Section 400.17 to remove the prohibition on cities requiring police officers to be residents of the cities by which they’re employed, but two (2) other factors must be considered. First, police officer applications are down around the country and Des Moines is no exception. The Des Moines Police Department does extensive recruitment for qualified police officer candidates both within and outside the City of Des Moines. If the Police Department could fill all its police officer positions with qualified City of Des Moines residents—and that was permissible by statute—it would be happy to do so. Unfortunately, even with the current status of the Code, we often have not been able to fill all funded and open positions. We would want to be sure that a requirement that officers live in the City doesn’t reduce the already limited pool of qualified candidates. Second, removal of the prohibition would not remove the requirement to collectively bargain the issue with the various unions representing city public safety employees. As I indicated, however, we are open to further discussions on how such a worthy goal could be realistically achieved.

The City is developing a program of incentives available to all employees who decide to move into the City of Des Moines. Our neighborhood revitalization efforts will also impact the likelihood that more City employees will choose to live within our City limits.

Perhaps the greatest willingness to move toward community demands is evidenced by the City’s addition of a proposed ordinance amendment to ban racial profiling in enforcement activity as mentioned above. The ordinance bans racial profiling as an illegal practice with penalties consistent with state or federal law which could result in termination from employment. Further, as suggested by the community, the proposed ordinance makes clear that it does not expand or limit any remedy or cause of action available under state or federal law to address discrimination. While the Civil and Human Rights Commission can facilitate the taking of a complaint concerning racial profiling, the proposed ordinance does not confer jurisdiction on the Civil and Human Rights Commission. Instead, the ordinance now makes clear that referral of the case to the Iowa Civil Rights Commission for investigation and resolution remains available.

As directed by Council, the proposed ordinance defines “enforcement action” broadly to include enforcement of city and state laws or ordinances by those city employees having authority to do so, which includes both police and code enforcement activities. At the suggestion of the community in our most recent meeting, we have removed the terms “substantial” and “significant” and modified the proposed ordinance’s “racial profiling” definition to include enforcement action where an “appreciably motivating factor of the action taken is based on race or another noted protected class.”

While we know the council action we are recommending is different than the entirety of what some in the community have requested, we hope that this can be seen as the good faith, substantive series of steps forward in addressing the concerns of the community that we believe it is. As indicated
previously, the City Administration remains steadfast in continuing the dialogue and following through on the commitments evidenced by these proposed Council enactments.

The code amendment and resolutions will be placed on the City Council agenda for March 9th.

Sincerely,

Scott E. Sanders
City Manager