

ORDINANCE NO. 15,906

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, by adding Article III, Sections 86-42, 86-43, 86-44, 86-45, 86-46, and 86-47, regarding unbiased policing.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, is hereby amended by adding Article III, Sections 86-42, 86-43, 86-44, 86-45, 86-46, and 86-47, regarding unbiased policing, as follows:

Article III. Unbiased Policing

86-42. Policy Statement.

86-43. Definitions.

86-44. Prohibitions and Procedures.

86-45. Complaints and Compliance.

86-46. Training.

86-47. Annual Review.

ARTICLE III. UNBIASED POLICING

Sec. 86-42. Policy Statement.

The City of Des Moines and the Des Moines Police Department shall be committed to the unbiased, equitable treatment of all. Department employees shall treat all in a fair, impartial and objective manner, in accordance with law, and without consideration of their individual demographics as defined in this Article.

Sec. 86-43. Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Article, except where the context clearly indicates a different meaning:

Biased Policing means differential treatment in the performance of law enforcement duties or delivery of police services towards a person or classes of persons when one or more individual demographics was a motivating factor in the action taken. If a person's individual demographics played a motivating factor in the city employee's decision, then that personal characteristic was a motivating factor of the action taken.

Fair and Impartial Treatment means persons, irrespective of individual demographics, are treated in the same manner under the same or similar circumstances. Reasonable concessions and accommodations may be made, when dealing with individuals with physical, developmental or mental disabilities, injury, illness, deafness, blindness, substance abuse disorders or similar conditions, individuals whose primary language is a language other than English, individuals of various cultural backgrounds, and individuals of youthful age, or when information about a person legally necessitates different treatment.

Individual Demographics means personal characteristics to include, but not limited to: race, creed, color, ethnicity, national origin, ancestry, religion, age, gender, sex, gender identity/ expression, sexual orientation, socioeconomic status, disability, immigration status, familial status, housing status, occupation, language fluency, cultural group, political status, or source of income, or any other identifiable characteristics.

Police Services means actions and activities that contribute to the overall well-being and safety of the public. These tasks include but are not limited to: crime prevention and investigation, preventive patrol, traffic control, traffic accidents, medical emergencies and lifesaving services, assistance at fire scenes, public information and education.

Racial Profiling means that form of biased policing where a motivating factor of the action taken is based on an individual's race, color, ethnicity, religion or national origin rather than on the individual's behavior or on information of the type and kind customarily and reasonably relied upon in identifying the individual as having engaged in prohibited activity. Racial profiling includes but is not limited to vehicle, pedestrian, and bicycle stops where race, color, ethnicity, religion or national origin was a motivating factor for the stop or enforcement action taken during the stop.

Specific subject description-based identification means a reasonably detailed physical description of the personal identifying characteristics of a potential suspect or victim, including but not limited to age, sex, ethnicity, race, or English language proficiency.

Sec. 86-44. Prohibitions and Procedures.

(a) *Fair & Impartial Treatment.*

(1) Biased policing is prohibited both in enforcement of the law and the delivery of police services by any employee.

(2) Racial Profiling is prohibited both in enforcement of the law and the delivery of police services by any employee. Discriminatory pretextual stops are prohibited under state and federal law and are also prohibited by this ordinance.

(3) Employees shall exercise their authority and act to accord fair and impartial treatment to all persons.

(4) Employees shall not consider individual demographics when performing law enforcement duties or delivering police services except when such characteristics are part of a specific subject description-based identification.

(5) Employees shall not use any terms, language or remarks that are derogatory, tend to belittle, show contempt for or defame any individual demographic, except when necessary to include such terms, language or remarks used by another for the preparation of official reports or testimony.

(6) Employees must be able to articulate reasonable suspicion or probable cause supporting any police action.

(7) Employees shall not take any law-enforcement action based on information from members of the public or other employees that they know, or reasonably should know, under all circumstances present is the product of, or motivated by, bias based on individual demographics unless the circumstances indicate that harm is imminent or a crime has been committed.

(b) *Department Policies and Procedures Accessible to the Public.* Hard copies shall be available upon request in accordance with Iowa Code Chapter 22. Department's personnel policies and standard operating procedures shall be made available to the public through publication on the City's website as soon as practicable in accordance with Iowa Code Chapter 22.

Sec. 86-45. Complaints and Compliance.

(a) Employees who witness or who are aware of instances of biased policing or racial profiling shall report the incident to a supervisor and shall provide all information known to them before the end of the shift during which they make the observation or become aware of the incident or as soon thereafter as practicable under the circumstances; where use of force occurs, officers have a duty to intervene to prevent or stop the use of unreasonable force by another officer when it is safe and a reasonable opportunity exists. Where appropriate, employees are encouraged to intervene at the time the biased policing or racial profiling incident occurs and in any event shall report such biased policing or racial profiling to a supervisor as soon as practicable under the circumstances.

(b) Any employee who opposes any practice occurring in violation of this Article shall not be discriminated against in any manner for opposing such practice, testifying, assisting or participating in any investigation, proceeding or hearing arising out of this Article.

(c) Supervisors shall ensure the working environment is free of bias and free of racial profiling. This oversight responsibility may include periodic inspections of body and in-car audio/video

systems, traffic stop data, reports and field inspections during police/citizen interactions. Supervisors shall:

- (1) Take the appropriate action when a violation of this Article occurs.
- (2) Ensure that there is no retaliation for individuals reporting such violations.

(d) Any person claiming to be aggrieved or to have witnessed biased policing or racial profiling may file a complaint. No person shall be discouraged, intimidated, or coerced from filing such a complaint, nor shall any person be discriminated or retaliated against because he or she has filed a complaint of this nature.

(1) While the Civil and Human Rights Commission will not have jurisdiction to investigate or adjudicate alleged violations of this ordinance, the commission staff shall educate the public about the complaint process and shall offer to assist, and shall assist individuals in preparing and filing a biased policing or racial profiling complaint with the Iowa Civil Rights Commission. The ICRC has jurisdiction over racial profiling complaints against law enforcement as such complaints allege discrimination in public accommodations by a local government unit that offers services to the public based on the individual demographics prohibited by the Iowa Civil Rights Act, Iowa Code Sec. 216.7. See also, Iowa Code Sec. 216.2(13) as now adopted or hereinafter amended. The remedies afforded by the Iowa Civil Rights Act are not exclusive and do not foreclose a person from asserting any remedies he or she may have based on the Federal or Iowa Constitutions, Federal or Iowa Codes, or common law.

(2) All complaints of biased policing or racial profiling brought to the City shall be directed to the department's Office of Professional Standards (OPS) or the Des Moines Civil and Human Rights Commission, or to both. If directed to the Des Moines Civil and Human Rights Commission, the Commission shall perform an intake function and also notify OPS. If directed to OPS, OPS shall perform an intake function and notify the Des Moines Civil and Human Rights Commission of the filed complaint.

(3) OPS will conduct a thorough investigation, consistent with the established citizen complaint process, for review by supervisory staff and the Chief of Police. The completed investigation with findings and recommendations will be reviewed by a committee consisting of the City Manager, Civil and Human Rights Commission Director, and City Attorney. The committee will provide their insight and advice to the Chief of Police who is responsible for the disposition.

(4) If the complaint is substantiated, the department will take appropriate measures commensurate to the severity of the substantiated complaint.

(5) OPS shall maintain data relating specifically to complaints of biased policing and racial profiling. Information shall be provided to the Chief of Police or designated authority in a manner most suitable for administrative review, problem identification, and development of appropriate corrective actions to prevent biased policing and racial profiling.

Sec. 86-46. Training.

At least annually all sworn officers shall receive and participate in training and guidance in regard to unbiased policing and prohibited racial profiling while conducting law enforcement activities and police services, which training shall include de-escalation, cultural diversity, cultural competency, and implicit bias and may include, but is not limited to: training on subjects related to police ethics, police-citizen interaction, standards of conduct, conducting motor vehicle stops, and related topics suitable for preventing incidents of biased policing and racial profiling.

Sec. 86-47. Annual Review.

This topic and policy under this Article will be reviewed annually and the City Manager shall certify such review to the City Council no later than the first day of the fiscal year.

Section 2. Racial profiling and biased policing are violations of this Article. Any penalty for violation of this new Article III related to any employee not acting in conformity therewith shall be limited to that provided under state or federal law, which violation may include serving as cause for discipline up to and including termination from employment as consistent with federal and state law requirements including Iowa Code Chapters 400 and 20 as applicable. The limitation related to violations of this new Article III related to employee violations of Article III is not intended to expand or limit any other remedy or cause of action available under state or federal law, nor to expand or restrict the time for seeking such remedy or cause of action and shall not be construed as doing so, nor as conferring jurisdiction on the Des Moines Civil and Human Rights Commission but, pursuant to § 86-45(d) Commission staff shall assist individuals who desire to file any complaint with to the Iowa Civil Rights Commission for investigation and resolution. The declaration of the prohibitions set forth in this Article shall not create any new or separate legal rights or claims by or on behalf of any third party and shall not be construed as a waiver, modification, or alteration of any available defense or governmental immunity of the city under federal or state law.

Section 3. The city council hereby directs the city manager to create a Community Policing and Code Enforcement Policy and Practice Review Committee (“PPRC”) to aid the city manager

in reviewing data and recommendations for policy and practice modifications to improve law enforcement policies and practices. The PPRC should include at least two members of the Des Moines Civil and Human Rights Commission, one member from the housing appeals board, one staff member from the community development department, and one sworn officer from the police department plus three members from the community who are residents of Des Moines who shall be appointed by the mayor and the at-large councilmembers, and one youth member recommended to the manager by the Des Moines Civil and Human Rights Commission. The PPRC should meet at least quarterly, or more frequently as PPRC determines, to review existing and planned policies and practices, and make recommendations to ensure elimination of existing or potential disparities in the enforcement of the law. In conducting such review, the PPRC shall at a minimum:

- 1) Review law enforcement and neighborhood code enforcement data for existing or potential disparities in practices;
- 2) Review law enforcement and neighborhood code enforcement practices and policies related to the delivery of unbiased policing and code enforcement;
- 3) Provide advice and recommendations to the city manager on policy and practice matters;
- 4) After substantial progress is made with the policy and practice matter review, the PPRC will research other committee structures to make recommendations to the Manager and Council concerning membership and scope of work of the PPRC for ongoing practice and process improvement.

The PPRC shall provide a detailed report to the city council no less than annually, and more frequently as circumstances warrant.

Section 4. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:

Douglas P. Philip, Assistant City Attorney

T. M. Franklin Cownie, Mayor

Attest: I, P. Kay Cmelik, City Clerk of the City of Des Moines, Iowa, hereby certify that the above and foregoing is a true copy of an ordinance (Roll Call No. 20-1061D), passed by the City Council of said City at a meeting held on June 22, 2020 signed by the Mayor on June 22, 2020 and published and provided by law in the Business Record on July 10, 2020. Authorized by Publication Order No. 11210.

P. Kay Cmelik, City Clerk