



CITY OF OAKLAND

INFORMATIONAL REPORT

TO: Edward D. Reiskin
City Administrator

FROM: Tonya Gilmore
Assistant to the City
Administrator

SUBJECT: Zero Tolerance Policy

DATE: January 27, 2021

City Administrator Approval

Date:

Jan 28, 2021

RECOMMENDATION

Staff Recommends That City Council Receive An Informational Report From The City Administrator On The Actions Taken To Address The Zero Tolerance Policy For Racist, Practices, Behaviors, And Actions Within The City Of Oakland In Light Of The Internal Investigation Launched By The Oakland Police Department Denouncing Hate Speech.

BACKGROUND / LEGISLATIVE HISTORY

On June 16, 2020 the City Council adopted Resolution No. [88167](#) C.M.S., which established a Zero Tolerance Policy for racist practice, behaviors and actions in the City of Oakland. This report provides an update on the actions taken to adhere to the policy. Specifically, the resolution resolves:

- (1) ESTABLISHING A ZERO TOLERANCE POLICY FOR RACIST PRACTICES, BEHAVIORS, AND ACTIONS WITHIN THE OAKLAND POLICE DEPARTMENT AND ALL CITY DEPARTMENTS, AGENCIES AND DIVISIONS, AND UNITS;**
- (2) URGING THE CIVIL SERVICE COMMISSION, PURSUANT TO ITS JURISDICTION, TO ADOPT RULES REQUIRING THE DISQUALIFICATION OF ANY APPLICANT FOR EMPLOYMENT FOR SPECIFIED REASONS, INCLUDING BUT NOT LIMITED TO THE UNIFORMED RANKS OF THE OAKLAND POLICE DEPARTMENT; AND**
- (3) DIRECTING THE CITY ADMINISTRATOR NOT TO HIRE, AND TO FIRE POLICE OFFICERS AND OTHER EMPLOYEES FOR SUCH SPECIFIED REASONS.**

EXECUTIVE SUMMARY

The resolution fundamentally establishes a zero-tolerance policy for racist practices, behaviors, and actions within the City of Oakland government. This explicit policy establishment is consistent with existing policies (as noted below) and strengthens direction and focus on the City's efforts to ensure its application in letter and in spirit.

Public Safety Committee
February 9, 2021

As to section (2) of the Resolution:

URGING THE CIVIL SERVICE COMMISSION, PURSUANT TO ITS JURISDICTION, TO ADOPT RULES REQUIRING THE DISQUALIFICATION OF ANY APPLICANT FOR EMPLOYMENT FOR SPECIFIED REASONS, INCLUDING BUT NOT LIMITED TO THE UNIFORMED RANKS OF THE OAKLAND POLICE DEPARTMENT

In response to the adoption of Resolution No. 88167 C.M.S., the matter was brought to the Civil Service Board on July 16, 2020 with the resolution, report and letter that was adopted by City Council. At that meeting, the Civil Service Board requested that a representative from the City Council's Office who sponsored the legislation would present to the Civil Service Board so they could better understand the directive.

On October 15, 2020, Pamela Ferran from City Councilmember Taylor's office presented the resolution to the Board. Board members raised the following questions:

- Does the policy apply to sworn Police Officers or all City employees?
- Is the final version of legislation been signed off?
- Are the Civil Service Rules the appropriate place to address this policy?
- Are there City policies and rules that already address these concerns?

As a follow-up, Ms. Ferran will prepare a memo to the Board to clarify the applicability of the policy and an update about the final version of the legislation. The Staff to the Board will provide existing policies and procedures that apply to this issue.

On November 16, 2020, the Staff to the Board sent Administrative Instruction (AI) 71 (Equal Employment Opportunity/Anti-Discrimination/Non-Harassment Policy and Complaint Procedure) and Administrative Instruction 596 (City-wide Code of Conduct – Non-Sworn Employees) to the members of the Civil Service Board. Additionally, on December 17, 2020, the Staff to the Board sent four Oakland Police Department rules and bulletins and three policies from Oakland Fire Department, all related to anti-discrimination, to the Civil Service Board.

The next step for the Civil Service Board is to receive a memo for Councilmember Taylor's Office and the receive a memo from the Staff to the Civil Service Board. The matter will be placed on the February 18, 2021 agenda.

As to section (3) of the Resolution:

DIRECTING THE CITY ADMINISTRATOR NOT TO HIRE, AND TO FIRE POLICE OFFICERS AND OTHER EMPLOYEES FOR SUCH SPECIFIED REASONS.

The Oakland Police Department has taken the following actions to ensure that the intent of the Resolution is applied.

Part One: Hiring and Recruiting

The Oakland Police Department (OPD) Recruiting and Background Unit is committed to seeking out and hiring the very best candidates to serve the Oakland community. Key priorities for Oakland police are to hire local, diverse, and culturally competent, empathic individuals, recognizing the importance of both understanding and connecting with all of the diverse communities we serve. OPD engages in targeted recruiting efforts to achieve these goals, and

the department has seen significant results in this past year as noted in the demographics below.

OPD is committed to a fair, equitable, communicative, and comprehensive hiring process, as well as in our assignments and promotional selections.

OPD works with other City Departments to ensure adherence to State and Federal Law regarding discrimination, as well as all applicable City of Oakland and OPD policies, including City Administrative Instruction 71 (AI-71). AI-71 clearly provides a zero-tolerance policy on discrimination of any kind toward potential hiring candidates or as discovered in a hiring candidate's background investigation.

OPD also employs a robust character review process for all new hires to determine if any adverse information gleaned during a hiring candidate's background investigation indicate any violations of State or Federal Law or city and departmental policies. This process includes a review of the activities and affiliations and the review of mandatory and rigorous psychological and polygraph screenings. Each Candidate's in-depth background investigation is reviewed by OPD's Executive Team adhering to anonymization by race, sex, and name to ensure "blind" equitable consideration of all candidates.

Below are the demographics for the current (185th) Basic Police Academy from the beginning of the academy for the 36 individuals initially enrolled.

Sex

- Female: Seven individuals (19 percent)
- Male: Twenty-nine individuals (81 percent)

Race

- African American/ Black: Twelve individuals (33 percent)
- Asian: Seven individuals (19 percent)
- Hispanic: Eleven individuals (31 percent)
- Other: One individual (three percent)
- Pacific Islander: One individual (three percent)
- White: Five individuals (11 percent)

African American/ Black Females

Three individuals (eight percent)

Education

- Master's Degree: Three individuals (eight percent)
- Bachelor's Degree: Twelve individuals (33 percent)
- Associates Degree: Six individuals (17 percent)
- Some College: Eleven individuals (31 percent)
- High School: Four individuals (11 percent)

Languages Spoken

Fifty-five percent of the individuals initially enrolled in the 185th basic academy speak languages in addition to English, with two individuals speaking three languages each.

- Cambodian: One individual (three percent)
- Cantonese: Two individuals (five percent)
- Farsi: One individual (three percent)
- Hindi: Two individuals (five percent)
- Mongolian: One individual (three percent)
- Punjabi: One individual (three percent)
- Russian: Two individuals (five percent)
- Spanish: Eleven individuals (31 percent)
- Tagalog: Two individuals (five percent)

Oakland Connection

- Oakland Born: Nine individuals (25 percent)
- Oakland Resident: Eight individuals (22 percent)

Part Two: Internal and external disparity and bias reduction/training/ policy systems

Phase I

OPD has recognized concerns raised around disparities in discipline findings based on race. In response to these concerns, OPD engaged an outside consulting firm (Hillard Heintze) in March 2019 to conduct a review of internal investigative and discipline processes. The primary goal of the study was to determine if racial and/or gender disparities existed in these processes. Hillard Heintze was selected by a small group of stakeholders including the Director of the Department of Race and Equity; a Plaintiff's Attorney from *Delphine Allen v. City of Oakland* (basis for the Negotiated Settlement Agreement); staff from the Oakland Office of the City Attorney; and staff from OPD. Hillard Heintze was tasked with conducting a review of the discipline process and administrative investigation process of complaints of misconduct. These processes were reviewed for sworn personnel of all ranks and Police Officer Trainees during the police academy and probationary officers in the Field Training Program over a five-year period – from 2014 through 2018.

Hillard Heintze issued a [report](#) of its findings in April 2020 that revealed disparities in disciplinary findings towards African American/ Black officers and provided recommendations to the Department that focused on improvements and modifications in three areas:

- Internal Affairs Division (IAD) regarding discipline;
- Police Academy and Field Training Program and;
- Background and Recruiting regarding the hiring and background process

Phase II

OPD determined the best way to approach these modifications in systems and processes was to stand up an internal Race and Equity Team to assist with the adoption of the Hillard Heintz report recommendations and provide sustainability to continue addressing implicit bias and disparities.

After a review of the recommendations that came from the Hillard Heintze study, the Race and Equity team has guided the implementation of over 95 percent of the recommendations to date. The final recommendation, that involved completion of Procedural Justice Training III on racial equity and implicit bias, is currently underway. OPD has been a leader in developing and presenting Procedural Justice Training and has begun meeting and working with a group of community members, researchers from SPARQ (Social Psychological Answers to Real-world Questions) at Stanford University, and other vital stakeholders. This training is being scheduled for the spring of 2021 and will include a community component to ensure our department members can hear directly from impacted communities they work with.

Phase III

OPD continues to work with Stanford SPARQ Researchers as part of the Racial Disparity Study Working group. The Stanford Researchers have focused on identifying quantitative and qualitative data sets to support OPD in measuring the effectiveness of the implemented strategies from the Hillard Heintze study. OPD's goal is to identify policies and procedures that address areas at high risk for potential bias and disparate treatment. OPD is attempting to achieve this goal through partnerships with identified subject matter experts who have demonstrated success in addressing racial bias and equity concerns.

OPD has focused on creating cultural change through education and training as well as the development of new policies, protocols, and procedures. OPD has moved forward with practicing equity in the discipline process. Its Internal Affairs Division (IAD) has been tracking data based on the outcome of OPD's efforts to be cognizant of its use of the equity lens in its decision-making as it relates to discipline. OPD began anonymizing demographic (race and sex) information concerning individuals who are the subject of internal investigations in July 2020, as a best practice to help mitigate bias. The tracking of discipline by offense to include aggravating and mitigating circumstances has also been effective in ensuring consistency in the discipline process. IAD has been working with Stanford researchers to identify data to demonstrate whether the anonymization of the subjects during the presentation of sustained cases and discipline findings should lead to changes in outcome. The Recruiting and Background Unit and Training Division have implemented changes to protocols that have resulted in increased diversity and decreased attrition among marginalized groups.

External Disparity and Bias Reduction/Training/ Policy Systems

OPD continues its effort to reduce racial disparities in traffic stops. The Department continues for the third consecutive year to see reductions in the overall number of traffic stops. OPD reduced the number of traffic stops of African American individuals by 70 percent from 2017 to 2019 (14,388 to 4,285). OPD also experienced a 12 percent reduction in racial disparities for African American individuals during this period. The development of the OPD intelligence-led stop data collection project has led to these reductions, requiring officers to be more focused on

traffic stops related to violent crime and minimizing the need for equipment stops. OPD is also using new, innovative stop data dashboards. These dashboards provide OPD command staff with real time stop data analytics, which assist in focusing on officer stops activities and performance auditing. OPD continues to conduct monthly risk management meetings where command staff having robust dialogue on potential at risk performance. Several risk dimensions are examined including force used, complaints received, collisions, pursuits, and traffic stop data.

Part Three: Current Investigation of OPD Personnel

It has come to the attention of OPD that a former employee has given media interviews that he made statements that he attended the events in Washington, DC on January 6, 2021 and defended the actions of the takeover at the Capitol. The statements made by the former employee were reprehensible and OPD wholly disavows his remarks. This former employee was separated from his employment with the City of Oakland nearly six years ago. OPD wants to assure the Oakland community that those statements offend the morals and ethics of the women and men of the Department.

OPD has overhauled hiring and screening procedures over the last few years to help ensure that offensive values do not represent current department employees. While there are allegations that current employees may have been involved on social media accounts that contain objectionable or offensive content, OPD is committed to fully and aggressively investigating these allegations and will not allow any members to engage in or support this type of content and will root out this conduct anywhere within the Department. Hate speech, offensive conduct, or affiliation with subversive groups will not be tolerated; there are clear policies and guidelines that govern this behavior.

Whether on or off duty, as a matter of policy, employees of OPD are prohibited from affiliating with subversive groups, and they are prohibited from doing anything that brings disrepute to the Department and erodes the public's trust. OPD policies reflect the values of the Department and any employee found to violate these policies will be held accountable. Any employee that violates these rules is subject to discipline, including termination. OPD opened an immediate comprehensive investigation into allegations to determine whether any current employees have violated our Department policies, City code of conduct, or any applicable laws by making comments or expressions supporting objectionable speech.

The Department wants to reassure the community that our full breadth of Department resources will go into this investigation to ensure that any members engaging in this behavior are held accountable. The City has retained an external investigations firm to conduct a full investigation with OPD's Internal Affairs Division, and the Community Police Review Agency is conducting a parallel investigation.

The values of OPD are clear: The Department will not tolerate any form of hate speech, any expression that supports hate speech, or any acts of subversion, whether in-person or on online platforms.

In addition, the steps taken by the Department Human Resource Management, the Civil Service Board and the Oakland Police Department, there are a number of Administrative Instructions in

place that provide support for Resolution to all employees in all city departments, agencies, divisions and units including but not limited to:

AI 71	Equal Employment Opportunity/Antidiscrimination/ Non-Harassment Policy and Complaint Procedure	Outlines the standards, requirements, complaint procedures and disciplinary guidelines regarding inappropriate and/or unprofessional conduct that could potentially rise to the level of discrimination and/or harassment; and (2) set out complaint and investigation procedures for all employees and job applicants who believe they have been subjected to inappropriate workplace conduct based on their protected status.
AI 596	Citywide Code of Conduct Nonsworn Employees	Sets guidelines for professional and courteous conduct by all non-sworn City employees. This policy applies to all non-sworn employees of all city departments and agencies while conducting City business, including conduct of supervisors and managers towards subordinates.

It is important to understand, however, that not every instance of discrimination or harassment by an employee can or should be dealt with through termination. The majority of our employees are represented by our labor partners and may only be terminated for cause. This legal requirement is enshrined in our Civil Service Rules, administrative policies, and our various labor agreements. It is also consistent with Oakland's values because it helps ensure that our treatment of employees is measured, fair, equitable, and consistent.

When a Civil Service employee has engaged in racist or otherwise discriminatory behavior, due process requires the City to consider whether counseling, training, and/or a lower level of discipline would prevent the behavior from reoccurring. It is axiomatic that the purpose of discipline is to correct behavior, not to be punitive. Therefore, a less serious mistake or violation – particularly when it is the employee's first offense – may not justify termination. This process, which is known as "progressive discipline," is a cornerstone of labor relations, and it is incorporated in the City's Administrative Instructions 521 ("Employee Discipline - Due Process Requirements") and 523 ("Disciplinary Guidelines and Procedures"). Furthermore, if the conduct occurs while the employees is off-duty, possibly even in a private setting, then additional due process protections – and possibly even First Amendment protections – can come into play and limit the City's ability to terminate or discipline.

FISCAL IMPACT

There is no fiscal impact associated with this informational report.

PUBLIC OUTREACH / INTEREST

No public outreach was conducted other than the required posting on the City's website

COORDINATION

This report was completed in coordination with the Department of Human Resource Management, Oakland Police Department and the Office of the City Attorney.

SUSTAINABLE OPPORTUNITIES

Economic: There are no economic opportunities associated with this report.

Environmental: There are no environmental opportunities associated with this report

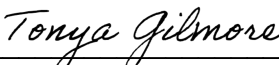
Race and Social Equity: All Oakland residents and employees have a right to and an expectation of a Zero Tolerance Policy for Racist, Policies, Behaviors, and Actions within the City of Oakland.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That City Council receive an informational update on the actions taken by the City Administrator in support of the Resolution No. 88167 C.M.S.

For questions regarding this report, please contact Tonya Gilmore, Assistant to the City Administrator at 510-238-7587.

Respectfully submitted,



Tonya Gilmore
Assistant to the City Administrator