

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2013**

No. 71

Introduced by Council Members Williams, Mark-Viverito, Mendez, Lander, Cabrera, Jackson, Arroyo, Barron, Brewer, Chin, Comrie, Dickens, Dromm, Ferreras, Foster, Garodnick, James, King, Koppell, Lappin, Levin, Palma, Reyna, Richards, Rodriguez, Rose, Van Bramer, Vann, Weprin, Wills, Mealy, Eugene, Gonzalez and the Public Advocate (Mr. de Blasio).

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to prohibiting bias-based profiling.

Be it enacted by the Council as follows:

Section 1. Declaration of Legislative Intent and Findings. The City Council finds that bias-based policing endangers New York City's long tradition of serving as a welcoming place for people of all backgrounds. The Council further finds that the people of the City of New York are in great debt to the hard work and dedication of police officers in their daily duties. The name and reputation of these officers should not be tarnished by the actions of those who would commit discriminatory practices. By passing this legislation, it is the intent of the City Council to create a safer city for all New Yorkers.

The City Council expresses deep concern about the impact of NYPD practices on various communities in New York City. In particular, the Council expresses concern about the NYPD's growing reliance on stop-and-frisk tactics and the impact of this practice on communities of color. In 2002, the NYPD made approximately 97,000 stops. By 2010, the number of stops had increased to more than 601,000. Black and Latino New Yorkers face the brunt of this practice and consistently represent more than 80 percent of people stopped despite representing just over

50 percent of the city's population. Moreover, stop-and-frisk practices have not increased public safety, as year-after-year nearly 90 percent of individuals stopped are neither arrested nor issued a summons.

Bias-based profiling by the police alienates communities from law enforcement, violates New Yorkers' rights and freedoms, and is a danger to public safety. It is the Council's intent that the provisions herein be construed broadly, consistent with the Local Civil Rights Restoration Act of 2005, to ensure protection of the civil rights of all persons covered by the law.

§ 2. Section 14-151 of the administrative code of the City of New York is amended to read as follows:

§ 14-151 [Racial or Ethnic]*Bias-based* Profiling Prohibited. a. Definitions. As used in this section, the following terms have the following meanings:

1. "[Racial or ethnic]*Bias-based* profiling" means an act of a member of the force of the police department or other law enforcement officer that relies on *actual or perceived* race, [ethnicity, religion or] national origin, *color, creed, age, alienage or citizenship status, gender, sexual orientation, disability, or housing status* as the determinative factor in initiating law enforcement action against an individual, rather than an individual's behavior or other information or circumstances that links a person or persons [of a particular race, ethnicity, religion national origin] to suspected unlawful activity.

2. "Law enforcement officer" means (i) a peace officer or police officer as defined in the Criminal Procedure Law who is employed by the city of New York; or (ii) a special patrolman appointed by the police commissioner pursuant to section 14-106 of the administrative code.

3. *The terms "national origin," "gender," "disability," "sexual orientation," and "alienage or citizenship status" shall have the same meaning as in section 8-102 of the*

administrative code.

4. *“Housing status” means the character of an individual’s residence or lack thereof, whether publicly or privately owned, whether on a temporary or permanent basis, and shall include but not be limited to:*

(i) an individual’s ownership status with regard to the individual’s residence;

(ii) the status of having or not having a fixed residence;

(iii) an individual’s use of publicly assisted housing;

(iv) an individual’s use of the shelter system; and

(v) an individual’s actual or perceived homelessness.

b. Prohibition.

1. Every member of the police department or other law enforcement officer shall be prohibited from [racial or ethnic]engaging in bias-based profiling.

2. *The department shall be prohibited from engaging in bias-based profiling.*

c. Private Right of Action

1. *A claim of bias-based profiling is established under this section when an individual brings an action demonstrating that:*

(i) the governmental body has engaged in intentional bias-based profiling of one or more individuals and the governmental body fails to prove that such bias-based profiling (A) is necessary to achieve a compelling governmental interest and (B) was narrowly tailored to achieve that compelling governmental interest; or

(ii) one or more law enforcement officers have intentionally engaged in bias-based profiling of one or more individuals; and the law enforcement officer(s) against whom such action is brought fail(s) to prove that the law enforcement action at issue was justified by a factor(s)

unrelated to unlawful discrimination.

2. A claim of bias-based profiling is also established under this section when:

(i) a policy or practice within the police department or a group of policies or practices within the police department regarding the initiation of law enforcement action has had a disparate impact on the subjects of law enforcement action on the basis of characteristics delineated in paragraph 1 of subdivision a of this section, such that the policy or practice on the subjects of law enforcement action has the effect of bias-based profiling; and

(ii) The police department fails to plead and prove as an affirmative defense that each such policy or practice bears a significant relationship to advancing a significant law enforcement objective or does not contribute to the disparate impact; provided, however, that if such person who may bring an action demonstrates that a group of policies or practices results in a disparate impact, such person shall not be required to demonstrate which specific policies or practices within the group results in such disparate impact; provided further, that a policy or practice or group of policies or practices demonstrated to result in a disparate impact shall be unlawful where such person who may bring an action produces substantial evidence that an alternative policy or practice with less disparate impact is available and the police department fails to prove that such alternative policy or practice would not serve the law enforcement objective as well.

(iii) For purposes of claims brought pursuant to this paragraph, the mere existence of a statistical imbalance between the demographic composition of the subjects of the challenged law enforcement action and the general population is not alone sufficient to establish a prima facie case of disparate impact violation unless the general population is shown to be the relevant pool for comparison, the imbalance is shown to be statistically significant and there is an identifiable policy or practice or group of policies or practices that allegedly causes the imbalance.

d. Enforcement

1. An individual subject to bias-based profiling as defined in paragraph 1 of subdivision a of this section may file a complaint with the New York City Commission on Human Rights, pursuant to Title 8 of the Administrative Code of the City of New York, or may bring a civil action against (i) any governmental body that employs any law enforcement officer who has engaged, is engaging, or continues to engage in bias-based profiling, (ii) any law enforcement officer who has engaged, is engaging, or continues to engage in bias-based profiling, and (iii) the police department where it has engaged, is engaging, or continues to engage in bias-based profiling or policies or practices that have the effect of bias-based profiling.

2. The remedy in any civil action or administrative proceeding undertaken pursuant to this section shall be limited to injunctive and declaratory relief.

3. In any action or proceeding to enforce this section, the court may allow a prevailing plaintiff reasonable attorney's fees as part of the costs, and may include expert fees as part of the attorney's fees.

e. Preservation of rights. This section shall be in addition to 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 New York and all other federal law, state law, law of the City of New York or the New York City Administrative Code, and all pre-existing civil remedies, including monetary damages, created by statute, ordinance, regulation or common law.

§ 3. Section 8-502 of the administrative code of the city of New York is amended by relettering current subdivisions e and f as new subdivisions f and g, and amending relettered subdivision f to read as follows:

[e]f. The provisions of this section which provide a cause of action to persons claiming to

be aggrieved by an act of discriminatory harassment or violence as set forth in chapter six of this title shall not apply to acts committed by members of the police department in the course of performing their official duties as police officers whether the police officer is on or off duty. *This subdivision shall in no way affect rights or causes of action created by Section 14-151 of the Administrative Code of the City of New York.*

[f]g. In any civil action commenced pursuant to this section, the court, in its discretion, may award the prevailing party costs and reasonable attorney's fees. For the purposes of this subdivision, the term "prevailing" includes a plaintiff whose commencement of litigation has acted as a catalyst to effect policy change on the part of the defendant, regardless of whether that change has been implemented voluntarily, as a result of a settlement or as a result of a judgment in such plaintiff's favor.

§ 4. Severability. If any provision of this bill or any other provision of this local law, or any amendments thereto, shall be held invalid or ineffective in whole or in part or inapplicable to any person or situation, such holding shall not affect, impair or invalidate any portion of or the remainder of this local law, and all other provisions thereof shall nevertheless be separately and fully effective and the application of any such provision to other persons or situations shall not be affected.

§ 5. This local law shall take effect ninety days after it is enacted.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on June 26, 2013, disapproved by the Mayor on July 23, 2013 and repassed by the Council on August 22, 2013 and said law is adopted notwithstanding the objection of the Mayor.

MICHAEL M. McSWEENEY, City Clerk Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 71 of 2013, Council Int No. 1080 of 2013) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council, disapproved by the Mayor and repassed by the City Council.

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel.