Int. No. 2212

By Council Members Gibson, Kallos, Constantinides, Louis, Chin, Rosenthal, Rivera and Gennaro

..Title

A Local Law to amend the administrative code of the city of New York, in relation to requiring the New York city commission on human rights to investigate past professional conduct by employees of the police department found to have engaged in biased acts and to make remedial recommendations, and to repeal section 8-131 of such code, relating to the inapplicability of certain provisions of chapter 1 of title 8 of such code to acts committed by members of the police department in the course of performing their official duties

..Body

Be it enacted by the Council as follows:

Section 1. Section 8-131 of the administrative code of the city of New York is REPEALED and a new section 8-131 is added to read as follows:

§ 8-131 Investigation of police conduct. a. Definitions. For purposes of this section, the following terms have the following meanings:

Chairperson. The term “chairperson” means the chairperson of the commission.

Commission to combat police corruption. The term “commission to combat police corruption” means the police commission established pursuant to mayoral executive order number 18, dated February 27, 1995.

State. The term “state” means the state of New York.

b. The commission shall initiate its own investigation of past conduct in the course of performance of official duties by a current or former employee of the police department who is found by (i) the commission, (ii) the police department, (iii) the civilian complaint review board, (iv) the commission to combat police corruption, (v) the department of investigation, (vi) the attorney general of the state, (vii) a district attorney for a county within the city, (viii) a court of competent jurisdiction or (ix) any other officer or body designated by the commission to have engaged in an act exhibiting prejudice, intolerance or bigotry, or of unlawful discrimination against any person or group of persons, regardless of whether such employee was on or off duty when engaging in such act, if such finding was made on or after January 1, 2016; provided further that the commission may at its discretion conduct such an investigation if such finding was made before January 1, 2016.

c. 1. The chairperson shall determine what constitutes an act exhibiting prejudice, intolerance or bigotry, or of unlawful discrimination, for purposes of initiating such investigation, in addition to the acts specified in this subdivision. Such acts include but are not limited to any conduct motivated by or based on animus against any protected class of person under this title, such as participation in any capacity in an online forum where racist, biased or hateful speech or racist, biased or hateful ideology is supported or promoted; any use of hate symbols on one’s person, in the workplace or otherwise in public; or threatening or harassing another person verbally or in writing on the basis of such animus.

2. The chairperson shall determine what constitutes a finding that a former or current employee of the police department has engaged in such an act for purposes of initiating such investigation; provided that such employee shall be deemed to have engaged in such an act if (i) such employee has resigned or filed a resignation with the police department after a charge of incompetency or misconduct was brought against such employee, (ii) such charge includes an allegation that such employee engaged in such an act, (iii) such employee had an opportunity to answer such allegation and (iv) such allegation remained pending or was sustained on or before the date of such resignation or filing of resignation.

d. 1. If the police commissioner, civilian complaint review board, commission to combat police corruption or commissioner of investigation determines that a current or former employee of the police department engaged in such an act, such officer or body shall promptly provide notice to the commission in a time, form and manner designated by the commission. Within six months after the effective date of the local law that added this section, the police commissioner, chair of the civilian complaint review board, chairperson of the commission to combat police corruption and commissioner of investigation shall each provide the commission with a list of current and former employees of the police department whom such officer or body has determined engaged in such an act before the effective date of the local law that added this section but on or after January 1, 2016; provided that such list shall be provided in a form and manner designated by the commission and shall include such additional information as the commission may require.

2. The chairperson shall consult with the police commissioner, chair of the civilian complaint review board, chairperson of the commission to combat police corruption, commissioner of investigation, attorney general of the state, district attorneys for each county within the city, federal, state and local courts with jurisdiction within the state and any other officer or body designated by the commission pursuant to subdivision b of this section at least once every 30 days after the effective date of the law that added this section to obtain information about findings that a current or former employee of the police department has engaged in such an act, including information about such findings made before the effective date of the law that added this section but on or after January 1, 2016.

e. The chairperson shall determine which types of past conduct in the course of performance of official duties by such employee to investigate based on the professional rank of and roles assigned to such employee, in addition to the types of such conduct specified in this subdivision. Types of such conduct include but are not limited to the following types of conduct:

1. Any past arrest made by such employee;

2. Any past instance of detainment conducted by such employee;

3. Any past response by such employee to a 911 call or any other emergency;

4. Any past investigation conducted by the police department that was headed by such employee or in which such employee participated in any capacity, including but not limited to the questioning of suspects and witnesses and the rendering of any decisions by such employee; and

5. Any past testimony provided at a hearing or in a court of law in the course of performance of official duties as an employee of the police department.

f. The commission shall investigate past conduct in the course of performance of official duties by such employee beginning from the date of hire by the police department of such employee until and including, in the case of a former employee of the police department, the last day of employment by the police department, or, in the case of a current employee of the police department, the date of initiation of an investigation pursuant to this section.

g. The chairperson may designate a third party to assist with such investigation and shall determine the functions of such third party. Any such third party shall keep confidential any information it obtains from the commission, or from any agency, another governmental unit or a person cooperating with the commission. Any employee, agent or representative of such third party is prohibited from disclosing outside the commission such information and any other information discovered in the course of such an investigation.

h. 1. Within 10 days after the commission initiates such investigation, the chairperson shall provide written notice to the employee of the police department being investigated, the police commissioner, the chair of the civilian complaint review board, the chairperson of the commission to combat police corruption, the commissioner of investigation, the attorney general of the state, the district attorneys for each county within the city, the corporation counsel and the United States attorneys for the southern and eastern districts of New York that such investigation has been initiated.

2. Within 10 days after the completion of such investigation, the chairperson shall provide a written statement of final determination to the parties who were required to be sent notice under paragraph 1 of this subdivision. Such statement shall include (i) the details of such investigation, including but not limited to the dates the investigation was initiated and concluded, the identity of the subject of such investigation, the objective of such investigation, a summary of the materials reviewed by the commission during such investigation, and other procedural details about such investigation; (ii) the investigative findings of the commission, including but not limited to the identification of any threat to the safety of an individual or the public, any action taken by the commission to address such threat and whether a past act in the course of performance of official duties by such employee exhibited prejudice, intolerance or bigotry, or amounted to unlawful discrimination against any person or group of persons, and the bases for any such findings; and (iii) any recommendations of the chairperson for disciplinary action, including but not limited to a disciplinary penalty, remedial action or both; or such statement shall indicate that the chairperson has determined to terminate such investigation and provide the basis for such termination.

3. The chairperson may promulgate rules that further prescribe the manner in which the commission is to conduct such investigation and the manner in which the chairperson is to present findings and make recommendations pursuant to paragraph 2 of this subdivision.

4. Within 30 days after receiving a written statement of final determination pursuant to paragraph 2 of this subdivision, the police commissioner shall report to the chairperson in writing on any action taken or planned to be taken in response, including the level of discipline and any penalty imposed or to be imposed upon such employee, as well as any other remedial action. In any instance where the action taken or planned to be taken in response by the police commissioner differs from that recommended by the chairperson, the police commissioner shall provide in such written report a detailed explanation for deviating from the recommendations of the chairperson and an explanation of how the final disciplinary or remedial decision was determined, including each factor the police commissioner considered in making such a determination. If the police commissioner takes action in response to such written statement of final determination after such 30-day period, the police commissioner shall provide another such written report to the chairperson within 10 days after taking such action.

5. Pursuant to paragraph 2 of subdivision d of section 905 of the charter, the commission has the power and duty to make, sign and file an administrative complaint upon its own motion alleging any violation of this title discovered in the course of an investigation initiated pursuant to this section; and pursuant to chapter 4 of this title as provided by paragraph 3 of subdivision d of section 905 of the charter, the commission has the power and duty to refer information disclosed by an investigation initiated pursuant to this section that a person or group of persons may be engaged in a pattern of practice that results in the denial to any person or group of persons of the full enjoyment of any right secured by this title to the corporation counsel for the purpose of commencing a civil action.

i. The commission shall initiate and undertake any investigation pursuant to this section in accordance with the requirements of this chapter and the charter for an investigation initiated by the commission on its own, including the recordkeeping requirements set forth in section 8-114 and in paragraph 4 of subdivision e of section 905 of the charter.

j. In carrying out an investigation pursuant to this section, the commission shall have the power to issue subpoenas and take the testimony of any person under oath pursuant to paragraphs 1 and 2 of subdivision e of section 905 of the charter, in addition to all other powers granted by such subdivision.

k. Other agencies shall make services available to the commission and furnish information to the commission pursuant to section 906 of the charter in the course of an investigation initiated pursuant to this section. The police department shall provide such assistance as the commission may request and cooperate fully with such investigation. The police commissioner shall ensure that employees of the police department respond to inquiries by the commission in connection with such investigation.

l. The chairperson shall submit a written report by September 30, 2021 and every 6 months thereafter to the mayor and the speaker of the council that concisely summarizes each investigation initiated pursuant to this section. For each such investigation, such report shall include but not be limited to the date of initiation and any date of completion or termination, the current status, a description of any investigative findings and recommendations set forth in a written statement of final determination and a description of any reports from the police commissioner in response to a written statement of final determination.

m. The provisions of this section shall not be construed to limit or impair the authority of the police commissioner to discipline employees of the police department. Nor shall the provisions of this section be construed to limit the rights of such employees with respect to disciplinary action, including but not limited to the right to notice and a hearing, which may be established by any provision of law or otherwise.

n. The provisions of this section shall not be construed to prevent or hinder any investigation or prosecution undertaken by the police department, civilian complaint review board, department of investigation, a court of competent jurisdiction, a grand jury, a district attorney or any other authorized officer, agency or body.

§ 2. Subdivision a of section 14-190 of the administrative code of the city of New York, as added by local law number 68 for the year 2020, is amended to read as follows:

a. The department shall maintain a centralized system that is used to record, track, review[,] and evaluate officer activity and to identify officers who may be in need of enhanced training, monitoring[,] or reassignment. Such system shall collect and utilize, at a minimum, the following:

(i) information reported pursuant to section 7-114;

(ii) complaints received and results of investigations conducted by the civilian complaint review board;

(iii) complaints received and results of investigations conducted by the department, including but not limited to investigations conducted by the internal affairs bureau, and any disposition resulting from any such investigation;

(iv) complaints received pursuant to section 804 of the charter;

(v) use of force incidents and incidents of excessive force, as those terms are defined in section 14-158;

(vi) arrests and summonses for violations of sections 240.20, 195.05 and 205.30 of the penal law;

(vii) judicial or departmental determinations that detentions of individuals were not legally justified;

(viii) criminal arrests or investigations of an officer, to the extent known to the department;

(ix) judicial determinations that an officer’s testimony is not credible;

(x) vehicle pursuits and collisions involving department equipment;

(xi) violations of the department’s patrol guide;

(xii) disciplinary actions and ongoing disciplinary proceedings; [and]

(xiii) non-disciplinary corrective actions[.]; and

(xiv) results of investigations conducted by the New York city commission on human rights pursuant to section 8-131 and of any investigation conducted by such commission of all work performed and cases handled by the equal employment opportunity division of the office of equity and inclusion within the department between September 1, 2014 and November 30, 2020, inclusive, pursuant to the local law that added this section.

§ 3. a. In addition to any other investigation required by section 8-131 of the administrative code of the city of New York, the New York city commission on human rights shall investigate all work performed and cases handled by the equal employment opportunity division of the office of equity and inclusion within the police department between September 1, 2014 and November 30, 2020, inclusive, to determine whether such work performed and cases handled by such division were done in accordance with the purpose, mission and protocols of such division as described by the police department in any policies of the police department and any publicly published materials.

b. The police department shall provide such assistance as such commission may request and cooperate fully with any investigation undertaken pursuant to this section, including by providing such commission with any and all materials containing policies of the police department that describe the purpose, mission or protocols of such division. The police commissioner shall ensure that employees of the police department and other persons acting on behalf of such department respond to inquiries by such commission in connection with such investigation.

c. The chairperson of such commission may designate a third party to assist with such investigation and shall determine the functions of such third party. Any such third party shall keep confidential any information it obtains from the commission, or from another governmental unit or a person, as defined in subdivision 10 of section 1-112 of the administrative code of the city of New York, cooperating with the commission. Any employee, agent or representative of such third party is prohibited from disclosing outside such commission such information and any other information discovered in the course of such investigation.

d. Upon the conclusion of such investigation, the chairperson of such commission shall make publicly available online and submit to the mayor, the police commissioner and the speaker of the council a report of the findings of such investigation. Such report shall include recommendations for improving the function of such division with respect to its purpose, mission and protocols and for remedying instances in which such division did not fulfill such purpose or mission or follow its protocols.

e. Within 30 days after receiving such report from such chairperson, the police commissioner shall report to such chairperson in writing on any action taken or planned to be taken in response. In any instance where the action taken or planned to be taken in response by the police commissioner differs from that recommended by such chairperson, the police commissioner shall provide in such written report a detailed explanation for deviating from the recommendations of such chairperson and an explanation of how any actions taken or planned to be taken in response were determined, including each factor the police commissioner considered in making such a determination. If the police commissioner takes action in response to such report after such 30-day period, the police commissioner shall provide another such written report to the chairperson within 10 days after taking such action.

§ 4. Sections one and two of this local law take effect 120 days after they become law, except that the chairperson of the New York city commission on human rights shall take such measures as are necessary for the implementation of section one of this local law, including the promulgation of rules, before such date.

§ 5. Section three of this local law takes effect 30 days after it becomes law.

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