

ORDINANCE NO. 2004-11-09-001(revision of #2004-08-10-003)

AN ORDINANCE OF THE CITY OF KEMPNER, TEXAS, PROVIDING FOR POLICIES AND PROCEDURES APPLICABLE TO ARTICLES 2.131 THROUGH 2.136 OF THE CODE OF CRIMINAL PROCEDURE; ADOPTING A RACIAL PROFILING POLICY FOR PEACE OFFICERS; MAKING DECLARATIONS; PROVIDING SEVERABILITY AND OPEN MEETINGS CLAUSES; AND PROVIDING FOR RELATED MATTERS.

Whereas, the City desires to deter officers from profiling individuals based on race, ethnicity or national origin alone rather than on an individual's behavior or information identifying the individual as having engaged in criminal activity or being a suspect;

Whereas, although race, ethnicity and national origin may be legitimate elements of a criminal investigation, discretion to initiate law-enforcement actions should not be based solely on race, ethnicity or national origin; and

Whereas, it is necessary for the City of Kempner, Texas (herein "City"), a general law municipal corporation, to adopt policies and procedures for implementing Articles 2.131 through 2.138, Chapt. 2, Tex. Code of Crim. Proc., mandating the adoption of a racial profiling policy for the City of Kempner Police Department (herein "Police Department");

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KEMPNER, TEXAS, THAT:

Section 1. Findings. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

Section 2. Approval and Adoption. The City of Kempner Racial Profiling Policy, attached hereto as Exhibit "A" and spread on the minutes of this meeting (the "Policy"), is hereby approved and adopted. The Racial Profiling Policy shall be and remain in full force and effect, until such time as repealed, modified or amended by resolution or ordinance of the City Council. Where the Policy conflicts with the Code of Criminal Procedure or a specific department policy, the more restrictive shall govern.

Section 3. Orders of Chief of Police. The Chief of Police is responsible for the day-to-day operation of the Police Department and must operate and manage the Police Department in a manner consistent with the policies and procedures of the City, the laws of the State and Federal Government, the Code of Criminal Procedure, and the public safety needs of the citizens. The Chief of Police may from time to time issue specific orders or specific policy statements for the Police Department that are consistent with the Policy adopted herein for the Police Department and that are consistent with the personnel policies of the City as needed to guide officers and departmental practices not specifically addressed in the Policy or that vary the policies as needed to create policies that will comply with changes in the law. The Chief of Police shall cause such policies and procedures, and any proposed modifications or amendments, to be drafted, prepared and recommended to the City Council for review and action as necessary to serve the best interests of the City and the Police Department employees and citizens.

Section 4. City Council Approval. The racial profiling policies and procedures of the Police Department of the City, and all revisions, modifications and amendments thereto, shall be approved by the City Council, in its discretion, by resolution, and no such policies, procedures, revisions, modifications or amendments shall be in effect except as approved by the City Council acting by resolution. Such policies, procedures, rules and regulations as are approved by resolution of the City Council shall be and remain in effect until thereafter repealed, modified or amended by resolution, and all, or any part of, such policies, procedures, rules, regulations,

revisions, modifications and amendments may be repealed, deleted, modified or amended, at anytime by the City Council acting in its discretion.

Section 5. Audio and Video Equipment. The Chief of Police shall, immediately, upon enactment of this Policy, commence examination of the feasibility of installing video camera equipment and transmitter-activated equipment in any City motor vehicle, now owned or acquired after passage of this policy, regularly used to make traffic stops, and transmitter-activated equipment in each City motorcycle, now owned or acquired after the passage of this policy, regularly used to make traffic stops, and shall report to the City Council any such vehicles which are not equipped with adequate equipment. The report shall include funding options available to the City, including any funding available through the Department of Public Safety.

In the event that the findings of such examination supports the installation of additional equipment in any motor vehicle required to be equipped but not already equipped, the Chief of Police is authorized and directed to apply for funding to secure the additional equipment as expeditiously as feasible. The Chief of Police is authorized and directed to certify to the Department of Public Safety any need for additional equipment for which funds are not available. On receipt of either sufficient funds or video and audio equipment, the Chief of Police shall direct such actions as necessary to expeditiously install and begin the operation of video and transmitter-activated equipment in each motor vehicle regularly used to make traffic stops, and shall direct such actions as necessary to expeditiously install and begin the operation of transmitter-activated equipment on each motorcycle regularly used to make traffic stops. The Chief of Police is authorized and directed to certify to the Department of Public Safety that such equipment has been installed and is being used to record each record each traffic and pedestrian stop made by an officer employed by the City that is capable of being recorded by video and audio or audio equipment, as appropriate.

Section 6. Interpretation and Construction. The policies and procedures, rules and regulations of the Police Department shall be interpreted and construed consistent with the Code of Criminal Procedure. The general policies and procedures of the Police Department shall not be interpreted or construed as creating third party rights. The policies and procedures, rules and regulations of the Police Department shall be interpreted as a general guideline to be used by the Police Department to promote professionalism and organizational development. Nothing in the Policy, or its amendments, shall be interpreted or construed as an obligation, mandate, requirement or agreement of the City or the Police Department to function or operate in the manner or methods described therein.

EXHIBIT "A"

a. Policy and Purpose

This Racial Profiling Policy is adopted to require compliance with the mandates of Articles 2.131 through 2.136, Texas Code of Criminal Procedure, prohibiting Texas Peace Officers from engaging in racial profiling.

b. Definitions

Racial Profiling: means a law enforcement-initiated acting based on an individual's race, ethnicity or national origin rather than on the individual's behavior or on information identifying with individuals as having engaged in criminal activity.

Race or Ethnicity: means of a particular descent, including Caucasian, African, Hispanic, Asian or Native American descent.

Acts Constituting Racial Profiling: any traffic pedestrian stop, including a subsequent arrest or search, or similar law enforcement-initiated action based solely on the race, ethnicity or national origin of an individual. Race, ethnicity or nation origin may be legitimate in law enforcement initiated acting when used as part of an actual description of a specific suspect or when used in conjunction with other known factors of a suspect.

Pedestrian Stop: means an interaction between an officer and an individual who is being detained for the purposes of a criminal investigation in which the individual is not under arrest.

Traffic Stop: means the stopping of a motor vehicle by an officer for an alleged violation of law or ordinance regulating traffic.

c. Prohibition

Police Officers of the City of Kempner are strictly prohibited from engaging in acts constituting racial profiling. The prohibition against racial profiling does not preclude the use of race, ethnicity or national origin as factors provided probable cause, other than just race, ethnicity or national origin, exist for the law enforcement-initiated action.

Q. Complaint Process and Public Education

Any person who believes that an officer employed by the City has engaged in racial profiling with respect to that person, may file a sworn complaint with the Chief of Police. Should the complaint be against the Chief of Police, the complaint shall be filed with the City Secretary.

Such complaints shall be in writing, sworn and signed by the complainant. However, should an individual be incapable of writing, the city employee receiving the complaint shall ensure that the individual is assisted in reducing the same to writing and signing the complaint.

Each complaint shall be reviewed according to the grievance procedures for the Police Department. Complaints against the Chief of Police shall be handled according to the grievance procedures of the City. In the event that a complaint of racial profiling filed by an individual involves an occurrence that was recorded on audio or video, the Chief of Police shall, upon commencement of the investigation of the complaint and upon written request of the officer, promptly provide a copy of the recording to the officer that is a subject of the complaint.

e. Corrective Action

Any officer who is found, through an investigation or admission, to have engaged in prohibited racial profiling shall be subject to corrective action. The Chief or acting Chief of Police, having authority to discipline, may issue a reprimand; require diversity, sensitivity or other appropriate training or counseling; order paid or unpaid suspension; terminate the employment of the peace officer, or take any other action determined to be appropriate.

A single act constituting racial profiling may not be considered a pattern of racial profiling, and may not be grounds for corrective action, unless it is in writing.

All complaints concerning peace officers of the City received by the City shall be handled according to the policies of the City in force at such time as the complaint is filed for citizens complaints. Any adverse actions taken as a result of the complaint may be appealed in the same manner as provided in the personnel policy.

f. Collection and Report Requirements for Traffic Stops for which a Citation is Issued or Arrest Made.

For each traffic stop which results in a citation being issued, an officer is required to collect information relating to the traffic stop. On the citation, the officer must indicate:

1. the violator's race or ethnicity, to the best of the officer's ability to determine the race or ethnicity;
2. whether a search was conducted;
3. whether the search was consensual or not; and,
4. whether an arrest was made for the cited violation.

Not later than March 1st of each year, the Chief of Police shall submit a report, based on the information gathered from the traffic citations written in the preceding calendar year (January 1 – December 31), to the City Council containing the following information as documented in the traffic citations written from the preceding calendar year:

1. the number of traffic citations written, regardless of the number of offenses indicated thereon or the disposition of the cases;
2. a breakdown of the race or ethnicity of each individual cited in a traffic stop;
3. number of traffic citations that resulted in a search;
4. number of searches conducted and, of the searches conducted, the number of searches having been by consent and without consent; and,
5. number of arrests resulting from the traffic stop.

The annual report shall not include identifying information about any individuals stopped or arrested, and shall not include identifying information about any officer involved in a stop or arrest.

g. Audio and Video Equipment

If the equipment used to record audio and/or video traffic or pedestrian stops is malfunctioning or otherwise not operable, the peace officer in charge of the vehicle shall immediately report the failure to the immediate supervisor. The Chief of Police, or the Chief's designee, shall be notified of a malfunction or inoperable equipment that is not repaired within 24 hours of malfunction. Should the equipment not be repairable within 24 hours, the Chief of Police, or the Chief's designee, shall determine the necessity of use of the vehicle containing the inoperable or malfunctioning equipment.

Given the resources available, the vehicle should not be utilized with the inoperable or malfunctioning equipment, unless the vehicle is necessary for public safety purposes and to continue the operations of the department. When feasible, the motor vehicle containing inoperable or malfunctioning equipment shall be parked until such time as the equipment can be repaired or replaced. Should the motor vehicle containing malfunctioning or inoperable equipment be necessary for public safety, the operator's duties shall, as much as possible, be limited to necessary pedestrian and traffic stops only until the equipment is repaired or replaced.

Any traffic or pedestrian stops made while the equipment is malfunctioning or inoperable, shall be called in with a request for back-up from any motor vehicle of the department available with audio and video equipment.

Audio and video equipment that must be replaced or repaired for which funds for repair or replacement are not available, the Chief of Police shall report to the City Council, at the first available Council meeting, the need for additional funding with a report on funding options. If application to the Department of Public Safety is necessary, the Chief of Police shall make such application as expeditiously as practical.

h. Review of Video and Audio Documentation-Standard

This department shall retain the video and audiotapes, or the audiotape of each traffic and pedestrian stop for at least ninety (90) days after the date of the stop. If a complaint is filed with this department alleging that one of our officers has engaged in racial profiling with respect to a traffic or pedestrian stop, this department shall retain the video and audiotapes, or the audiotape of the stop until final disposition of the complaint.

In conjunction with preparation of the annual report required under Part VI above, the Chief of Police, or the Chief's designee, shall periodically conduct reviews of a randomly-selected sampling of video and audio recordings made recently by peace officers employed by the City in order to determine if acts or patterns of racial profiling exist for any officer. Supervisors will ensure officers are recording the traffic and pedestrian stops. A recording of each officer will be reviewed at least once every ninety (90) days.

In reviewing audio and video recordings, the Chief of Police, or the Chief's designee, shall seek to determine if the officers involved therein have engaged in acts or a pattern of acts constituting racial profiling for which there is no reasonable, credible explanation based on established police practices and law enforcement procedures for the law enforcement initiated action.

Immediate corrective measures shall be taken for any confirmed or suspected acts of racial profiling, including but not limited to additional training and education.

i. Training and Education

(a) The Chief of Police shall ensure that each officer employed by the City shall complete the education and training programs on racial profiling established by the Texas commission of Law Enforcement Officer Standards and Education (TCLEOSE) as required.

(b) The Chief of Police shall, in completing the training required by Section 96.641, Texas Education Code, complete the program on racial profiling established by the Bill Blackwood Law Enforcement Management Institute of Texas.

(c) The Police Department will, as feasible, inform the public of its policy against racial profiling and the complaint process including posting a notice of procedures in the lobby of the Police Department. Methods that may be utilized to inform the public are the news media, radio, service or civic presentations, the internet, as well as City Council meetings.

Section 7. Governmental Immunity. Nothing in this policy shall be deemed to waive, modify or amend any legal defense available at law or in equity to either the City, the Police Department or its employees, nor to create any legal rights or claims on behalf of any third party. Neither the City, the Police Department nor its employees waives, modifies or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State or Federal Law.

Section 8. Repeal of Conflicting Ordinances. All ordinances, parts of ordinances and sections of the City Code of Ordinances in conflict with this ordinance are hereby amended and repealed to the extent of such conflict. Any and all general policies, rules and regulations of the Police Department heretofore adopted and in effect are hereby repealed. Any and all personnel policies, rules and regulations of the City heretofore adopted and in effect at the time of adoption shall not be affected hereby.

Section 9. Severability. If any provision of this ordinance or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications hereof which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.


Section 10. Effective Date. This ordinance shall take effect immediately from and after its passage and signature by the Mayor.

Section 11. Open Meetings. That it is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapt. 551, Loc. Gov't. Code.

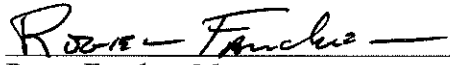
PASSED AND APPROVED on this 9th day of November, 2004.

Attest:

Approved:



Frances Spinney, City Secretary



Roger Fancher, Mayor