



Kate Harrison
Vice Mayor, District 4

REVISED AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: October 11, 2022

Item Number: 16

Item Description: **Adopt an Ordinance Adding Chapter 13.09 to the Berkeley Municipal Code Prohibiting Discriminatory Reports to Law Enforcement**

Submitted by: Vice Mayor Harrison

Revised item to reflect the City Attorney's clarifying edits.

ORDINANCE NO. -N.S.

ADDING A NEW CHAPTER 13.09 TO THE BERKELEY MUNICIPAL CODE
PROHIBITING DISCRIMINATORY REPORTS TO LAW ENFORCEMENT

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. The Berkeley Municipal Code Chapter 13.09 is added to read as follows:

Chapter 13.09
Discriminatory Reports to Law Enforcement

Sections:

13.09.010 Findings and Purpose.

13.09.020 Discriminatory Reports to Law Enforcement Prohibited.

13.09.030 Civil Cause of Action.

13.09.040 Undertaking for the General Welfare.

13.09.050 Severability.

13.09.010 Findings and Purpose.

The Council finds and expressly declares as follows:

- A. There have been numerous incidents across the country involving individuals contacting law enforcement to report innocuous behavior as suspicious, or to falsely report alleged criminal behavior, for what appear to be solely discriminatory reasons. Discriminatory law enforcement reports against people of color for racially motivated reasons are common enough that many people of color have experienced one or more incident of being contacted by law enforcement when engaging in normal day-to-day activities. These incidents cause serious harm to the person falsely accused of a crime, cause anxiety and distrust among people of color, and put an unnecessary strain on law enforcement officers responding to frivolous and false calls.
- B. The misuse of law enforcement by members of the public to discriminate against others should not be tolerated and the City should take action to stop such behavior in every way possible. Creating a means for people who suffer this kind of discrimination to seek redress from those who have targeted them through a civil cause of action for damages will discourage this type of behavior and provide a tangible way for these victims to be compensated for this wrong.
- C. This ordinance is not intended to discourage individuals from contacting law enforcement when they are facing real danger or desire to report a crime. It will allow individuals who have been reported to law enforcement for unfair and unnecessary reasons to seek justice and restitution, and will motivate people who contact law enforcement to consider the reasons they are making the report.

13.09.020 Discriminatory Reports to Law Enforcement Prohibited.

(a) It shall be unlawful to knowingly make a false or frivolous call to police to cause a peace officer to arrive at a location to contact a person, with the primary intent to ~~cause~~ any of the following to occur, on the basis of the person's actual or perceived Protected Attributes: race, color, ancestry, ethnicity, national origin, place of birth, sex, age, religion, creed, disability, sexual orientation, gender identity, weight, or height:

- (1) Infringe upon the person's rights under either the California Constitution or the United States Constitution;
- (2) Discriminate against the person;
- (3) Cause the person to feel harassed, humiliated, or embarrassed;
- (4) Cause the person to be expelled from a place in which the person is lawfully located;
- (5) Damage the person's reputation or standing within the community; or
- (6) Damage the person's financial, economic, consumer, or business prospects or interests.

(b) For purposes of this Chapter, "Protected Attributes" include race, color, ancestry, ethnicity, national origin, place of birth, sex, age, religion, creed, disability, sexual orientation, gender identity, weight, or height.

13.09.030 Civil Cause of Action.

(a) Any aggrieved person may enforce the provisions of this Section by means of a civil action.

(1) A person found to have violated Section 13.09.020 (a) in a cause of action under subsection (a) shall be liable to the aggrieved person for special and general damages, but in no case less than \$1,000 plus attorneys' fees and the costs of the action. In addition, punitive damages may be awarded in a proper case.

(2) Nothing in this Section shall preclude any person from seeking any other remedies, penalties, or procedures provided by law.

13.09.040 Undertaking for the General Welfare.

In enacting and implementing this ordinance, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

13.09.050 Severability.

If any section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Chapter. The Council of the City of Berkeley hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.