MODEL ORDINANCE RE: PREVENTING OVERPOLICING THROUGH EQUITABLE COMMUNITY TREATMENT (PrOTECT)

I. Purpose

Research has shown that Black and Brown people in the City of San Diego are more likely to be subjected to discretionary stops and searches by the San Diego Police Department (SDPD), which has also disproportionately searched individuals with disabilities and individuals officers perceived to be LGBT or Gender Non-Conforming. Raising the standard for how and when police can stop and search people is an important step to take to ensure everyone’s rights to move about freely in public spaces, regardless of race, ethnicity, nationality, disability, sexual orientation or immigration status are respected. This law is intended to address one set of tactics used by police that contribute to the over-policing of Black and Brown people, and to help prevent other forms of biased policing.

II. Policy Recommendation

We recommend adding Section 82.00 to Article 2 of the San Diego Municipal Code to read:

§ 82.00 Avoidance of Biased Policing

Legislative Findings and Intent

(a) The Council finds that the United States and California Constitutions emphasize the protection of individuals’ fundamental rights, including but not limited to the rights to equal protection and freedom of movement.

(b) The Council finds that racial or identity profiling and subjecting people to stops or searches without probable cause undermine effective police work by eroding public trust in the police and making the public less willing to report crimes, provide tips, or otherwise cooperate with law enforcement.

(c) The Council finds that there are common misperceptions about appropriate justifications for stops and searches. The Council declares that factors such as an individual’s mere “nervousness,” “presence in a high-crime neighborhood,” prior contact with law enforcement, criminal record, inclusion in a so-called “gang database,” suspicion of gang involvement, or attempts to avoid police do not provide sufficient bases for believing that the individual is engaged in criminal activity. This list is not exhaustive.

(d) The Council intends that officers shall be responsible for treating every member of the public that they interact with in a fair, equitable, and objective manner, in accordance with the law and regardless of the individual’s actual or perceived race, color, ethnicity, national origin, age, religion, gender identity or expression, sexual orientation, or mental or physical disability, or any other identifiable group characteristic. While conducting a stop, arrest, or search, officers are expected to treat the individual they are interacting with in a courteous and considerate manner, while providing for their safety and security. Failure to do so can escalate the interaction, increasing the risk of violence and further eroding public trust.
The Council intends this section to create protections and rights greater than those guaranteed by federal or state law. Nothing in this section shall be construed to diminish protections and rights guaranteed by federal or state law or conflict with requirements of state or federal law to which the City of San Diego is subject as a charter city.

**Definitions**

(f) For purposes of this section, “racial or identity profiling” is defined as the consideration of, or reliance on, to any degree, actual or perceived race, color, ethnicity, national origin, age, religion, gender identity or expression, sexual orientation, or mental or physical disability in deciding which persons or property to contact, address, speak with, interview, search, seize, or subject to any other law enforcement activity, except that an officer may consider or rely on characteristics listed in the specific description of a particular person in conducting a search or seizure otherwise allowed by this section or other applicable law.

(g) For purposes of this section, “officer” means San Diego Police Department officer and any other peace officer and/or code enforcement officer under the jurisdiction of the City of San Diego.

**Prohibition of Racial or Identity Profiling**

(h) Officers are prohibited from engaging in racial or identity profiling, including but not limited to in the course of stopping any person or vehicle; asking any questions or engaging in any encounters; searching or seizing any person or property; removing vehicle occupants during a traffic stop; issuing a citation; or making an arrest.

**Restrictions on Search and Seizure**

(i) Except as otherwise provided in this section, officers are prohibited from asking any person, including but not limited to persons who are on probation, parole, post-release community supervision, or any other court order or status that waives or limits a person’s Fourth Amendment right, for identification or for any information about: any person’s identity; probation, parole, post-release community supervision status, or any other court order or status that waives or limits a person’s Fourth Amendment rights; outstanding warrants; or participation in any criminal or other activity. This subsection does not, however, prohibit an officer from asking for identification if there is probable cause that the person stopped has committed, is committing, or is about to commit a crime, or from asking about a specific crime if the officer has probable cause that the subject of the inquiry has committed, is committing, or is about to commit that crime.

(j) Except as required by any state or federal law to which the City of San Diego is subject as a charter city, officers are prohibited from stopping any person, including but not limited to persons who are on probation, parole, post-release community supervision, or any other court order or status that waives or limits a person’s Fourth
Amendment rights, unless there is probable cause that the person stopped has committed, is committing, or is about to commit a crime.

(k) Notwithstanding subsection (j), officers are prohibited from stopping any person solely on the basis of violations based on the vehicle’s equipment, license plates, or registration, including but not limited to: expired registration; failure to have a light illuminating a license plate; defective and unsafe equipment; absence of functional taillights, headlights, turn signals, brake lights or a high mount stop light; absence of an exhaust system that prevents excessive or unusual levels of noise; having sun-shading materials and/or tinting films; or having objects suspended in the vehicle.

(l) When an officer stops a person, the officer is prohibited from extending the duration of the stop beyond the time necessary for investigating the specific offense for which the person was stopped, unless there is probable cause that the person stopped has committed, is committing, or is about to commit a crime other than the offense for which such person was stopped, in which case the officer may extend the duration of the stop for the time necessary to investigate that specific offense.

(m) While conducting a stop, officers are prohibited from questioning the person stopped about any offense other than an offense for which the person was stopped, unless there is probable cause that the person stopped has committed, is committing, or is about to commit a crime other than the offense for which such person was stopped.

(n) While conducting a stop, officers are prohibited from conducting a check to determine whether there are outstanding warrants for the stopped person or any individual accompanying the stopped person. Officers are additionally prohibited from conducting a check to determine whether the stopped person or any individual accompanying the stopped person is on probation, parole, or post-release community supervision, or subject to any other court order or status that waives or limits a person’s Fourth Amendment rights.

(o) Officers are prohibited from searching a person without probable cause that the person is armed and dangerous.

(p) Officers are prohibited from searching a vehicle without probable cause that the vehicle contains contraband or evidence of a crime.

(q) Officers shall not request consent to search any person, vehicle, residence, or other real or personal property. This provision shall apply equally to a temporary or permanent residence.

(r) Officers shall not conduct any stop or search based on a person’s consent.

(s) Officers shall not conduct any stop or search based on any condition of probation, parole, sentence, post-release community supervision, or any other court order or status that waives or limits a person’s Fourth Amendment rights.

(t) Unless required under the DNA Act or pursuant to a court order or search warrant, officers are prohibited from collecting a buccal swab sample or any other biological sample from a minor without first obtaining written consent of the minor and approval of the minor’s consent by a parent, legal guardian, or attorney, as specified in Section 625.4 of the Welfare and Institutions Code.
(u) Nothing in this section shall prohibit officers from approaching or communicating with a person solely for the purpose of offering assistance, determining if assistance is needed, or summoning assistance in case of illness or injury, substantial risk of serious injury to a person or animal, or a disabled or inoperative motor vehicle.

(v) Nothing in this section shall prohibit officers from asking for identifying information from a person reported as missing or from a witness to or victim of a crime.

**Documenting and Explaining Stops**

(w) Officers must document the reasons for all stops and searches in detail, without using conclusory or boilerplate language. The documentation must include an explanation of the specific and objective facts that caused the officer to believe the stop or search was justified. Upon request of a person who was stopped or searched by an officer, SDPD must provide a copy of this documentation to such person within 10 days of the stop or search. If requested by another person, SDPD must also provide such information on request within 10 days of the stop or search, but in responding to a request other than from the person stopped or searched, SDPD must redact information that could be used to identify the person who was stopped or searched.

(x) The documentation referred to in subsection (w) shall not be placed in any file containing “personnel records” as defined in Penal Code Section 832.8. Such documentation must be provided on request even if SDPD might otherwise be authorized to claim it is exempt from disclosure, under the California Public Records Act, Govt. Code §§ 6250-6277, except to the extent that SDPD shall redact identifying information as provided in subsection (r).

(y) Officers must explain the reason for any stop or search to the person stopped or searched, or the owner or occupant of any vehicle searched, as soon as practicable, and before asking for identification or asking any questions about the stopped person’s activities.

(z) By January 1, 2022, the City shall develop an informational card that can be provided to persons who are stopped to inform them of their rights during a stop, and must furnish copies of these cards to SDPD, with versions translated into the same languages that the San Diego County Registrar of Voters uses to fulfill its duties under the California Elections Code to prepare facsimile ballots. Starting no later than March 1, 2022, SDPD officers shall provide a copy of this informational card to every person they stop, in that person’s preferred language. The officer must provide and read the card to the person they stop as soon as practicable, and before asking for identification or asking any questions about the stopped person’s activities. The officer is prohibited from asking any questions until the person has had sufficient time to read and understand the card.

(aa) The informational card (“Card”) provided pursuant to subsection (z) shall be attached to a form (“Form”) that the officer shall use to provide the documentation required pursuant to subsection (w). The Card and Form shall both have the same incident number, which the person who has been stopped can use to request the
documentation required pursuant to subsection (w). The Card shall inform the stopped individual:

1. That they have the right to request and receive documentation of the reasons they were stopped;
2. Of the appropriate email address, website, phone number, and incident number the individual may use to request the documentation required pursuant to subsection (w);
3. That they have the right to remain silent and are not required to answer any questions about: where they are going; where they are traveling from; what they are doing; or where they live;
4. That the officer is prohibited from inquiring into, and the individual should not answer, questions about their immigration or citizenship status;
5. That the officer will not request permission, and is not permitted to request permission, to search their person or vehicle;
6. That they have the right to file a complaint if they believe any of their rights have been violated.

Enforcement

(bb) This section imposes a mandatory duty on all officers to avoid engaging in the practices prohibited in subsections (h)-(t) and to perform the duties required by this section.

(cc) Any violation of any subsection from (h)-(t) constitutes an injury and any person may institute and prosecute in their own name and on their own behalf or that of their ward or minor child a civil action in any court of competent jurisdiction for damages as well as for injunctive relief, writ of mandate, or other appropriate equitable relief to enforce this section or protect the peaceable exercise or enjoyment of the right or rights secured by this section,

(dd) A court shall award costs and reasonable attorneys’ fees to any plaintiff who is the prevailing party in an action brought to enforce this section.

(ee) In addition, where a court determines there has been a violation of any subsection from (h)-(t), the plaintiff will be awarded actual damages but in no case less than one thousand dollars ($1,000) per violation, to be paid by the City of San Diego. This award is independent of and in addition to any funds the plaintiff may recover through any other claims arising from the same incident.

(ff) Any violation of any subsection from (h)-(t) is a misdemeanor.

Reporting and Auditing

(gg) Beginning January 1, 2022, San Diego Police Department (“SDPD”) shall annually furnish to the Commission on Police Practices (“CPP”) all data necessary to produce a report documenting compliance with this section. CPP shall produce such a report annually, and provide it to the San Diego City Council within three months of receiving the data. The report shall:
1. Include a copy of the report SDPD is required to furnish to the California Department of Justice in order to comply with the Racial Identity and Profiling Act of 2015, including Government Code section 12525.2 (“Report”);
2. Document all instances when any civilian has filed a complaint or claim alleging a violation of this section;
3. For each incident reported under subdivision (y)(2), the information reported to the City Council shall indicate what action, if any, was taken in response to the complaint or claim, redacting information that could identify the officer(s) and/or complainant(s)/claimant(s);
4. Document the number of complaints and/or claims that have been filed during the year for violations or alleged violations of this section;
5. Document the number of individual officers who have been accused of violating this section;
6. Document the number of complaints and/or claims filed by zip code and police beat number and name;
7. Document, where known, the race, color, ethnicity, national origin, age, religion, gender identity or expression, sexual orientation, or mental or physical disability of the person who filed the complaints and/or claims; and
8. Provide statistical data demonstrating the outcome of the complaints or claims.

SDPD shall redact all reports and documentation provided pursuant to this subsection to avoid providing personal information, including but not limited to names and social security numbers, that may tend to identify any person.

(hh) Beginning June 1, 2022, the City Auditor shall provide an annual audit of SDPD’s compliance with this section and present a report with findings to the City Council.

Severability

The provisions in this section are severable. If any part or provision of this section, or the application of this section to any person or circumstance, is held invalid, the remainder of this section, including the application of such part or provisions to other persons or circumstances, shall not be affected by such holding and shall continue to have force and effect.