

ORDINANCE 2008-1

AN ORDINANCE TO AID CITY OFFICIALS AND THE POLICE DEPARTMENT BY ENCOURAGING COMMUNITY COOPERATION AND INVOLVEMENT IN THE GENERAL SAFETY AND WELFARE OF THE CITY AND ITS RESIDENTS, THROUGH PLACING A PROHIBITION ON POLICING CITIZENS AND PROVIDING GENERAL CITY SERVICES ON THE BASIS OF: APPEARANCE, ETHNICITY, GENDER, IMMIGRATION STATUS, MANNER OF DRESS, NATIONAL ORIGIN, PHYSICAL CHARACTERISTIC, RACE, RELIGIOUS BELIEFS, OR SEXUAL ORIENTATION, TO PROVIDE EXCEPTIONS THERETO, TO PROVIDE PENALTIES FOR VIOLATIONS THEREOF, AND TO REPEAL ALL OTHER ORDINANCES IN CONFLICT THEREFROM.

The City of Hamtramck ordains that:

Section 1: Short Title

This Ordinance may be cited as the “Community-Participation In Local Government and Local Law Enforcement Ordinance”.

Section 2: Purpose and Intent

It is the policy of the City of Hamtramck to respect the rights of and provide equal services to all persons regardless of appearance, ethnicity, gender, immigration status, manner of dress, national origin, physical characteristic, race, religious beliefs, or sexual orientation; to ensure the enforcement of rights under the United States Constitution, including due process and equal protection; to promote community safety; to encourage victims of crime and witnesses of crime to cooperate with law enforcement authority without regard to immigration status or sexual orientation; to prevent bias-based policing; and to promote the cooperation of all individuals, regardless of their immutable characteristics, with our Hamtramck Police Department and Hamtramck City Government. In order to permit members of immigrant communities to access services, including, but not limited to law enforcement services, that are provided by the City of Hamtramck to which they are entitled; and to ensure that City Public servants are acting consistently with federal law regarding local governments cooperating with federal immigration authorities, the City of Hamtramck enacts this ordinance as an effective way to guide City public servants and Police Officers in adhering to rights under the United States Constitution, including, but not limited to, due process and equal protection, and under federal law, while protecting the safety and health of all members of the Hamtramck Community.

Section 3: Definitions

For the purposes of this ordinance, the following words and phrases shall have the meanings respectively ascribed to them by this section:

(1.) *Blight Violation* means any unlawful act, or omission or failure to act, which is designated by this Code as a blight violation pursuant to Section 41(2) of the Michigan Home Rule Cities Act, being MCL 117.4(2);

(2) *City* means the City of Hamtramck;

(3) *Civil infraction* means an act or omission that is prohibited by the Code enacted by the City, which is not a crime as defined in Section 5 of the Michigan Penal Code, being MCL 750.5, and for which civil sanctions may be ordered;

(4) *Criminal Offense* means a felony or misdemeanor as set forth in federal or state law of City ordinance, but does not mean a blight violation or civil infraction;

(5) *Person* means any individual including, but not limited to, victims and witnesses of crimes;

(6) *Police officer* means a sworn member or reserve member of the Hamtramck Police Department or any person acting upon the direction or any of these members of the Hamtramck Police Department;

(7) *Public servant* means the City Manager, Mayor, members of the City Council, the City Clerk, any member of a City agency, board, commission, or other voting body that is established by the Hamtramck City charter and any appointee, any employee, or any individual who provides services to the City of Hamtramck within or outside of its offices or facilities pursuant to a personal services contract;

Section 4: Bias-based provision of police and other city services, on the basis of appearance ethnicity, gender, immigration status, manner of dress, national origin, physical characteristics, race, religious beliefs, or sexual orientation prohibited; exception

Public servants and police officers shall not exercise differential treatment of individuals in rendering police and other city services based on a person's appearance, ethnicity, gender, immigration status, manner of dress, national origin, physical characteristics, race, religious beliefs, or sexual orientation. A public servant, who is a police officer, shall not base reasonable suspicion for an investigative detention, probable cause for an arrest, or any other police action, solely on a person's appearance, ethnicity, gender, immigration status, manner of dress, national origin, physical characteristic, race, religious beliefs, or sexual orientation. A public servant, who is a police officer, may take into account the reported appearance, gender, ethnicity, and immigration status, manner of dress, national origin, physical characteristics, race, religious beliefs, or sexual orientation for the purpose of identifying a described individual.

Section 5: Solicitation of immigration status by public servants and police officers, prohibited; exceptions.

Public servants and police officers:

- (1). Shall not solicit information concerning immigration status for the purpose of ascertaining a person's compliance with federal immigration law; or
- (2). Shall not solicit information concerning immigration status from a person who is seeking police and other city services, or is a victim or is a witness;
- (3). Notwithstanding the prohibitions set forth in Subsections (1) and (2) of this section, public servants, who are police officers, are expressly permitted to engage in the following activities, which shall not constitute a violation of this ordinance:

- (a). Solicit information concerning immigration status when performing public safety functions while assisting federal law enforcement in the investigation of a criminal offence under the United States Code or other Federal Law; or
- (b). Solicit information concerning immigration status from the subject of a criminal offense, or when processing an arrested person.

Section 6: Solicitation of immigration status by public servants prohibited; exceptions

- (1) A public servant is prohibited from inquiring into the immigration status of any person, or engaging in activities designed to ascertain the immigration status of any person, while acting within the scope of his or her authority, or employment, as a public servant.
- (2) Notwithstanding the prohibitions set forth in Subsection (1) of this section, public servants are expressly permitted to engage in the following activities, which shall not constitute a violation of this ordinance:
 - (a). Solicit information concerning immigration status where specifically required by a federal, state, or City law or program as a condition of eligibility for the service sought; or
 - (b). Solicit information concerning immigration status for the purpose of completing I-9 Forms, and when relevant, in making hiring and payroll withholding decisions, including, but not limited to, completing I-9 Forms, Questioning a person to complete the I-9 Form, obtaining documents that support the I-9 Form, and allowing federal authorities to audit an I-9 Form in accordance with law; or
 - (c). Solicit information concerning immigration status for a subpoena issued in a criminal proceeding, civil litigation, or an administrative proceeding for the production of City documents or for testimony of a public servant, including where related to immigration issues or other security issues; or
 - (d). Solicitation of information concerning immigration status by a public servant, who is a police officer, as set forth in Section 5 of this Ordinance.

Section 7: Implementation of ordinance

This ordinance shall be implemented by the City Manager or his/her designee through ongoing training and educational programs to inform public servants regarding its prohibitions and requirements.

Section 8 Violation and penalties

People may file a formal complaint with the city if they have information that they believe, in good faith, establishes a violation of this ordinance. Any complaint must be in writing, and filed with the city manager or his/her designee. The complaint may be filed by mail or electronic mail, hand delivered, through an elected official, or by a third party. The complaint statement need not be in English, and in the case of complaints not filed in English, the city shall cause the complaint to be translated into English at no expense to the complainant. The city manager shall investigate all complaints and either affirm or deny the complaint within 10 working days of the receipt of the complaint, in writing and report said disposition to city council by or before the next regularly scheduled city council meeting. If the complaint is denied, the city manager shall explain, in detail, how the investigation was conducted and why the complaint was denied. If the complaint is affirmed, appropriate disciplinary action shall be taken against the employee or official for violation of city policy. Any disciplinary action shall be carried out in accordance with the provisions of the Hamtramck (2005) City Charter and other laws, City personnel rules, civil service rules, union contracts, or other departmental agency rules and regulations and may include discipline up to and including discharge from public service. A copy of the denial or affirmation shall be mailed to the complainant at the address provided by the complainant in their written complaint. In addition, all employees shall receive a copy of this ordinance and shall sign a statement acknowledging the receipt of the copy within 30 days of the effective date of this ordinance or at the time of hire. The city shall, on an on going and annual basis, provide diversity training for all employees and officials. No employee and official shall be exempt, and the city manager shall maintain a record of all training including the list of attendees at the training sessions.

Section 9: Severability

The invalidity of any clause, sentence, paragraph, or part of this Ordinance shall not affect the validity of the remaining parts of this Ordinance.

Section 10: Saving Clause

A prosecution which is pending on the effective date of this Ordinance and which arose from a violation of an ordinance repealed by this Ordinance, or prosecution which is started within one (1) year after the effective date of this Ordinance arising from a violation of an ordinance repealed by this Ordinance and which was committed prior to the effective date of this Ordinance, shall be tried and determined exactly as if the Ordinance had not been repealed

Section 11: Repeal Clause

All Ordinances or parts of Ordinances, that conflict with this ordinance are repealed

Section 12: Effective date

This Ordinance is declared necessary for the public health, safety, and welfare of the City and is effective immediately upon passage of city council and publication according to law.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF HAMTRAMCK, WAYNE COUNTY, MICHIGAN THIS 22ND DAY OF JANUARY, 2008.

AYES: Ahmed, Algazali, Gordon, Klein, Shulgon, Stackpoole

NAYS: None

ABSTENTIONS: None

ABSENT: Majewski

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Karen Majewski, mayor

ATTEST:

Donald D. Crawford, acting city clerk

Enacted: January 22, 2008

Published: February 6, 2008