



**REGULAR MEETING & WORK SESSION
OF THE CITY COUNCIL**

March 9, 2021

ADDISON TREEHOUSE

**14681 MIDWAY RD. SUITE 200, ADDISON, TX 75001
6:00 PM EXECUTIVE SESSION,
WORK SESSION & REGULAR MEETING**

Notice is hereby given that the Addison City Council will conduct its REGULARLY SCHEDULED MEETING on Tuesday, March 9, 2021 at the Addison TreeHouse with a quorum of the City Council physically present. Limited seating for members of the public will be available using CDC recommended social distancing measures. The Town will utilize telephone or videoconference public meetings to facilitate public participation to mitigate the spread of COVID-19 by avoiding meetings that bring people into a group setting. Telephonic or videoconferencing capabilities will be utilized to allow individuals to address the Council. Email comments may also be submitted to: iparker@addisontx.gov by 3:00 pm the day of the meeting. Members of the public are entitled to participate remotely via Toll-Free Dial-in Number: 877.853.5247; Meeting ID: 409.327.0683 Participant ID: #. For more detailed instructions on how to participate in this meeting visit our Agenda Page. The meeting will be live streamed on Addison's website at: www.addisontexas.net.

Call Meeting to Order

Pledge of Allegiance

EXECUTIVE SESSION

Closed (Executive) Session of the Addison City Council pursuant to:

Section 551.071, Tex. Gov. Code, Consultation with an attorney to seek legal advice regarding pending or contemplated litigation or settlement offer regarding:

- Town of Addison, Texas v. CP Greenhill, LLC, and BBVA USA, f/k/a Compass Bank, Cause No. CC-20-01139-B, County Court at Law No. 2, Dallas County, Texas. (Greenhill Towers)

Section 551.074, Tex. Gov. Code, to deliberate the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee, pertaining to:

- City Attorney's Annual Evaluation

Reconvene in to Regular Session: In accordance with Texas Government Code, Chapter 551, the City Council will reconvene into Regular Session to consider action, if any, on matters discussed in Executive Session.

WORK SESSION

1. Present and Discuss **Any Action Necessary or New Information Regarding the COVID-19 Pandemic.**

REGULAR MEETING

Announcements and Acknowledgments Regarding Town and Council Events and Activities

Discussion of Meetings / Events

Public Comment

The City Council invites citizens to address the City Council on any matter, including items on the agenda, except public hearings that are included on the agenda. Comments related to public hearings will be heard when the specific hearing starts. Citizen comments are limited to three (3) minutes, unless otherwise required by law. To address the Council, please fill out a City Council

Appearance Card and submit it to a staff member prior to the Public Comment item on the agenda. The Council is not permitted to take any action or discuss any item not listed on the agenda. The Council may choose to place the item on a future agenda.

Consent Agenda

All items listed under the Consent Agenda are considered routine by the City Council and will be enacted by one motion with no individual consideration. If individual consideration of an item is requested, it will be pulled from the Consent Agenda and discussed separately.

2. Consider Action to Approve the **Minutes from the February 23, 2021, Regular Council Meeting.**

 3. Consider Action on a **Resolution to Approve an Events Agreement Between the Town of Addison and DCO Realty, Inc. for the Management, Operation, Coordination, and Control of a Variety of Events at Vitruvian Park, and Authorize the City Manager to Execute the Agreement** in an Amount Not to Exceed \$185,000.
-

Regular Items

4. Present, Discuss, and Consider Action to **Accept the Addison Police Department's 2020 Racial Profiling Report and Motor Vehicle Contact Search Analysis.**

 5. Present, Discuss, and Consider Action on an **Ordinance Declaring Unopposed the Mayoral Candidate in the May 1, 2021 Mayoral General Election, Elected to Office; Canceling the Election for the Office of Mayor; and Providing an Effective Date.**
-

Adjourn Meeting

NOTE: The City Council reserves the right to meet in Executive Session closed to the public at any time in the course of this meeting to discuss matters listed on the agenda, as authorized by the Texas Open Meetings Act, Texas Government Code, Chapter 551, including §551.071 (private consultation with the attorney for the City); §551.072 (purchase, exchange, lease or value of real property); §551.074 (personnel or to hear complaints against personnel);

§551.076 (deployment, or specific occasions for implementation of security personnel or devices); and §551.087 (economic development negotiations). Any decision held on such matters will be taken or conducted in Open Session following the conclusion of the Executive Session.

THE TOWN OF ADDISON IS ACCESSIBLE TO PERSONS WITH DISABILITIES. PLEASE CALL (972) 450-7017 AT LEAST 48 HOURS IN ADVANCE IF YOU NEED ASSISTANCE.

POSTED BY: _____
Irma G. Parker, City Secretary

DATE POSTED: 3/4/2021

TIME POSTED: 5:00 pm

DATE REMOVED FROM BULLETIN BOARD: _____

REMOVED BY: _____

Council Meeting

1.

Meeting Date: 03/09/2021

Department: City Manager

AGENDA CAPTION:

Present and Discuss Any Action Necessary or New Information Regarding the COVID-19 Pandemic.

BACKGROUND:

In December 2019, a novel (new) coronavirus known as SARS-CoV-2 ("the virus") was first detected and subsequently began causing outbreaks of the coronavirus disease COVID-19 that spread globally. The virus is easily transmitted through person to person contact, especially in group settings. As a result, the Federal Government, State of Texas, Dallas County, and the Town of Addison issued a series of declarations and orders to take measures to slow the spread of the virus and protect the ability of public and private health care providers to handle the influx of potential new patients and safeguard public health and safety.

On March 2, 2021, Texas Governor Gregg Abbott issued Executive Order GA-34 that fully opens all business and ends the statewide mask mandate effective on March 10, 2021. This order also rescinds many previous Executive Orders related to the pandemic.

Staff will update Council and the community on the impact of Executive Order GA-34.

For more information on the previous updates from the Town related to the COVID-19 pandemic, please visit: www.AddisonTexas.net/covid19.

RECOMMENDATION:

Information only, no action required.

Attachments

Executive Order GA-34

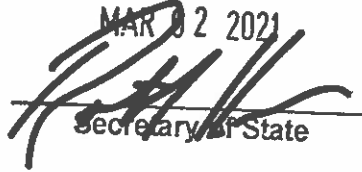


GOVERNOR GREG ABBOTT

March 2, 2021

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
1:15 PM O'CLOCK

MAR 02 2021


Secretary of State

The Honorable Ruth R. Hughs
Secretary of State
State Capitol Room 1E.8
Austin, Texas 78701

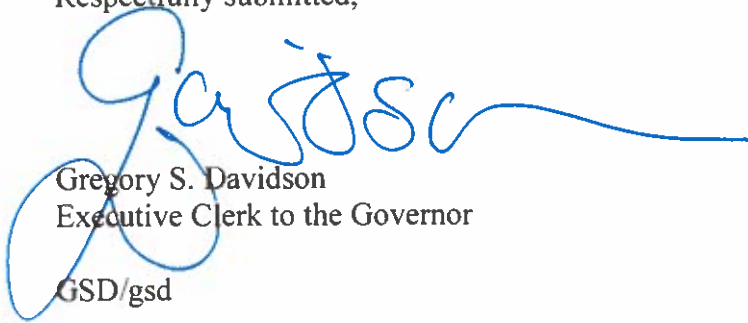
Dear Secretary Hughs:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

Executive Order No. GA-34 relating to the opening of Texas in response to the
COVID-19 disaster.

The original executive order is attached to this letter of transmittal.

Respectfully submitted,


Gregory S. Davidson
Executive Clerk to the Governor
GSD/gsd

Attachment

Executive Order

BY THE
GOVERNOR OF THE STATE OF TEXAS

Executive Department
Austin, Texas
March 2, 2021

EXECUTIVE ORDER GA 34

Relating to the opening of Texas in response to the COVID-19 disaster.

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, in each subsequent month effective through today, I have renewed the disaster declaration for all Texas counties; and

WHEREAS, I have issued executive orders and suspensions of Texas laws in response to COVID-19, aimed at protecting the health and safety of Texans and ensuring an effective response to this disaster; and

WHEREAS, I issued Executive Order GA-08 on March 19, 2020, mandating social-distancing restrictions in accordance with guidelines promulgated by President Donald J. Trump and the Centers for Disease Control and Prevention (CDC); and

WHEREAS, I subsequently issued a series of superseding executive orders aiming to achieve the least restrictive means of combatting the evolving threat to public health by adjusting social-distancing restrictions while implementing a safe, strategic plan to reopen Texas; and

WHEREAS, under Executive Order GA-32, in effect since October 14, 2020, most establishments have been able to operate up to at least 75 percent of total occupancy, except in some areas with high hospitalizations as defined in that order, where most establishments have been able to operate up to at least 50 percent of total occupancy; and

WHEREAS, I also issued Executive Order GA-29, regarding the use of face coverings to control the spread of COVID-19, and a series of executive orders, most recently GA-31, limiting certain medical surgeries and procedures; and

WHEREAS, COVID-19 hospitalizations and the rate of new COVID-19 cases have steadily declined due to the millions of Texans who have voluntarily been vaccinated, many more who are otherwise immune, improved medical treatments for COVID-19 patients, abundant supplies of testing and personal protective equipment, and Texans' adherence to safe practices like social distancing, hand sanitizing, and use of face coverings; and

WHEREAS, in the Texas Disaster Act of 1975, the legislature charged the governor with the responsibility "for meeting ... the dangers to the state and people presented by

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
1:15pm O'CLOCK

MAR 02 2021

disasters” under Section 418.011 of the Texas Government Code, and expressly granted the governor broad authority to fulfill that responsibility; and

WHEREAS, under Section 418.012, the “governor may issue executive orders ... hav[ing] the force and effect of law;”

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, and in accordance with guidance from medical advisors, do hereby order the following on a statewide basis effective at 12:01 a.m. on March 10, 2021:

1. In all counties not in an area with high hospitalizations as defined below:
 - a. there are no COVID-19-related operating limits for any business or other establishment; and
 - b. individuals are strongly encouraged to wear face coverings over the nose and mouth wherever it is not feasible to maintain six feet of social distancing from another person not in the same household, but no person may be required by any jurisdiction to wear or to mandate the wearing of a face covering.

“Area with high hospitalizations” means any Trauma Service Area that has had seven consecutive days in which the number of COVID-19 hospitalized patients as a percentage of total hospital capacity exceeds 15 percent, until such time as the Trauma Service Area has seven consecutive days in which the number of COVID-19 hospitalized patients as a percentage of total hospital capacity is 15 percent or less. A current list of areas with high hospitalizations will be maintained at www.dshs.texas.gov/ga3031.

2. In any county located in an area with high hospitalizations as defined above:
 - a. there are no state-imposed COVID-19-related operating limits for any business or other establishment;
 - b. there is no state-imposed requirement to wear a face covering; and
 - c. the county judge may use COVID-19-related mitigation strategies; *provided, however, that:*
 - i. business and other establishments may not be required to operate at less than 50 percent of total occupancy, with no operating limits allowed to be imposed for religious services (including those conducted in churches, congregations, and houses of worship), public and private schools and institutions of higher education, and child-care services;
 - ii. no jurisdiction may impose confinement in jail as a penalty for violating any order issued in response to COVID-19; and
 - iii. no jurisdiction may impose a penalty of any kind for failure to wear a face covering or failure to mandate that customers or employees wear face coverings, except that a legally authorized official may act to enforce trespassing laws and remove violators at the request of a business establishment or other property owner.
3. In providing or obtaining services, every person (including individuals, businesses, and other legal entities) is strongly encouraged to use good-faith efforts and available resources to follow the Texas Department of State Health Services (DSHS) health recommendations, found at www.dshs.texas.gov/coronavirus.
4. Nothing in this executive order precludes businesses or other establishments from requiring employees or customers to follow additional hygiene measures, including the wearing of a face covering.
5. Nursing homes, state supported living centers, assisted living facilities, and long-

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
1:15 PM O'CLOCK

MAR 02 2021

term care facilities should follow guidance from the Texas Health and Human Services Commission (HHSC) regarding visitations, and should follow infection control policies and practices set forth by HHSC, including minimizing the movement of staff between facilities whenever possible.

6. Public schools may operate as provided by, and under the minimum standard health protocols found in, guidance issued by the Texas Education Agency. Private schools and institutions of higher education are encouraged to establish similar standards.
7. County and municipal jails should follow guidance from the Texas Commission on Jail Standards regarding visitations.
8. Executive Orders GA-17, GA-25, GA-29, and GA-31 are rescinded in their entirety.
9. This executive order shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster, but only to the extent that such a local order restricts services allowed by this executive order or allows gatherings restricted by this executive order. Pursuant to Section 418.016(a) of the Texas Government Code, I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to the COVID-19 disaster that are inconsistent with this executive order, provided that local officials may enforce this executive order as well as local restrictions that are consistent with this executive order.
10. All existing state executive orders relating to COVID-19 are amended to eliminate confinement in jail as an available penalty for violating the executive orders. To the extent any order issued by local officials in response to the COVID-19 disaster would allow confinement in jail as an available penalty for violating a COVID-19-related order, that order allowing confinement in jail is superseded, and I hereby suspend all relevant laws to the extent necessary to ensure that local officials do not confine people in jail for violating any executive order or local order issued in response to the COVID-19 disaster.

This executive order supersedes Executive Orders GA-17, GA-25, GA-29, GA-31, and GA-32, but does not supersede Executive Orders GA-10 or GA-13. This executive order shall remain in effect and in full force unless it is modified, amended, rescinded, or superseded by the governor. This executive order may also be amended by proclamation of the governor.



Given under my hand this the 2nd
day of March, 2021.

A handwritten signature in black ink that reads "Greg Abbott".

GREG ABBOTT
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
1:15pm O'CLOCK

MAR 02 2021

ATTESTED BY:



RUTH R. HUGHS
Secretary of State

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
1:15pm O'CLOCK

MAR 02 2021

Council Meeting

2.

Meeting Date: 03/09/2021

Department: City Secretary

AGENDA CAPTION:

Consider Action to Approve the Minutes from the February 23, 2021, Regular Council Meeting.

BACKGROUND:

The minutes for the February 23, 2021 Council Work Session and Regular Meeting have been prepared for consideration.

RECOMMENDATION:

Administration recommends approval.

Attachments

Minutes - February 23 2021

DRAFT

OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL

February 23, 2021

**Executive Session, Work Session & Regular Meeting
5:30 p.m.**

**Addison TreeHouse
14681 Midway Rd., Addison, TX 75001**

The Addison City Council conducted its Regular Council Meeting on Tuesday, February 23, 2021 at the Addison TreeHouse with a quorum of the City Council physically present. Limited seating for members of the public was available using CDC recommended social distancing measures. The Town utilized telephone and videoconferencing to facilitate participation in the meeting. Interested parties were able to make public comments and address the Council via emailed comments submitted to the City Secretary at iparker@addisontx.gov by 3:00 pm on the meeting day. Members of the public were also entitled to participate remotely via Toll-Free Dial-in Number: 877.853.5247; Meeting ID: 409.327.0683 Participant ID: #. Detailed instructions on how to participate in this meeting were available on the Town's website on the Agenda Page. The meeting was live streamed on Addison's website at www.addisontexas.net

Present: Mayor Joe Chow; Mayor Pro Tempore Lori Ward; Deputy Mayor Pro Tempore Guillermo Quintanilla; Council Member Ivan Hughes; Council Member Tom Braun; Council Member Paul Walden; Council Member Marlin Willesen.

Call Meeting to Order: Mayor Chow called the meeting to order.

Pledge of Allegiance: Mayor Chow led the Pledge of Allegiance.

EXECUTIVE SESSION

Closed (Executive) Session of the Addison City Council pursuant to: Section 551.074, Tex. Gov. Code, to deliberate the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee, pertaining to:

- City Attorney's Annual Evaluation

Mayor Chow advised that the City Attorney’s evaluation will not be discussed at this time. The Executive Session will be convened to discuss this item following the conclusion of the Regular Items discussion.

Reconvene into Regular Session: In accordance with Texas Government Code, Chapter 551, the City Council will reconvene into Regular Session to consider action, if any, on matters discussed in Executive Session.

WORK SESSION

1. Present and Discuss the Format for the Town Meeting on April 5, 2021.

Mary Rosenbleeth, Director of Public Communications, presented this item. She requested feedback from the Council Members regarding the location and possible topics for the next scheduled Town Meeting.

Mayor Chow advised that typically only two-thirds of the Conference Center is used and suggested the whole facility could be used at 25 percent capacity in order to allow more distancing due to COVID. City Manager Wes Pierson advised that the Conference Center does not have any staff working there at this time so he will look into its use and communicate all details back to the Council when available. Ms. Rosenbleeth suggested rental of a local hotel’s grand ballroom as a possible alternative location. Council Members were in general agreement to hold a live Town Hall meeting that is broadcast rather than a virtual meeting.

Discussion of possible topics for the meeting resulted in the following assignments:

- Mayor Chow – Opening/Closing Remarks, FY21 Budget.
- Mayor Pro Tempore Ward - Economic Development, Airport.
- Deputy Mayor Pro Tempore Quintanilla – COVID-19 Response, Special Events, Belt Line Sign.
- Council Member Braun- Public Works Project Update – Addison Road/Keller Springs Road/Midway Road/Bella Lane/Vitruvian Well, Artic Storm Response if appropriate by then.
- Council Member Hughes - Silver Line Progress Report, Trails Master Plan.
- Council Member Walden - Public Safety & Technology, LPR Cameras.
- Council Member Willesen – Addison FixIT App

2. Present and Discuss Public Safety Recognition Options.

Jana Tidwell, Director of Parks and Recreation, presented two recognition plans. She reviewed that in October 2020 Council discussed ways to honor Addison Police Officer Ronnie Cox who was killed in the line of duty in 1986. The Addison Fire Department has a memorial for fallen firefighter Stephen Webb and there is a desire to do something similar for Officer Cox. Council directed staff to develop a short-term solution for a memorial for Officer Cox that could be installed near the Police Station and a separate large-scale project for public safety as a whole.

Ms. Tidwell provided photos of the memorials that are located at Fire Station #1. She advised that staff is proposing a plaza memorial for Officer Cox to be built on the lawn in front of the Police Station and across from Fire Station #1. Depictions of the proposal were presented. A plaque with an image of Officer Cox would be included. Input from his family members would be sought regarding the inscriptions. Several Council Members expressed that the memorial should be designed for relocation in the event the Police Department were to move to another location in the future.

Ms. Tidwell advised the project could be completed with a budget of less than \$20,000. Discussion followed regarding the source of funds for this project. It was decided to move forward with funding from the current budget. City Manager Pierson advised the memorial will be included with a mid-year budget amendment.

For the second proposed public safety memorial Ms. Tidwell suggested that artwork could be commissioned. A steering committee made up of members of the Addison Arbor Foundation, Police, Fire and Parks representatives would be formed to consider artwork proposals as well as discuss possible locations for the memorial. Two or three artist finalists would be selected and paid a stipend to develop and present their concepts. It was noted that the process would take two to three years to complete, and that flexibility of location for the memorial would be a factor.

Ms. Tidwell provided photos of public safety memorials in area cities as well as the associated costs. Possible locations discussed for Addison's public safety memorial included the Silver Line transit-oriented development area near Addison Circle Park, Beckert Park, or a future municipal complex. City Manager Pierson advised that the steering committee make recommendations on locations.

Council discussed a possible budget for the project. The consensus was to have a range of \$100,000 to \$200,000 for the artwork commission, and the site work cost would be determined at a later time. Council Member Willesen expressed that he would like for the Council to make the final selection decision.

3. Present and Discuss the Draft Report for the Trails Master Plan.

Jana Tidwell, Director of Parks and Recreation presented this item. She reviewed that in February 2020 Council authorized a contract with Moore Iacofano Goltsman, Inc. (MIG) to develop a City-Wide Trails Master Plan. A Trails Master Plan Advisory Committee was appointed by Council in April 2020 to provide feedback throughout the process.

Cole Gehler with MIG reviewed the project timeline and the steps taken to receive input from the public, staff, and Council. Considerations were given to safety, lighting, barriers, neighborhood loops, signage, and amenities. The results of resident surveys were provided that helped to establish the guiding principles, priorities, and goals of the Trail Master Plan. Mr. Gehler advised that based on the survey responses received, three trail scenarios were prepared for further feedback.

Jay Renkens with MIG reviewed the content of the Plan, including the various types of trails specifically designed for bikers and walkers. He presented the Plan in three Phases that cover a 20-year planning horizon. He reviewed the expected cost and various possible funding sources for future reference.

Mayor Chow inquired about the ADA upgrades that the Town currently plans to make with existing sidewalks. Ms. Tidwell advised that if a new trail is planned in an area that needs ADA upgrades currently, then the cost would be removed from the ADA plan and incorporated into the trail.

Council Member Braun questioned whether residents with neighborhood parks would want connections to other areas. Ms. Tidwell advised that input from residents suggested that they would want a connection to a larger trail system. It was noted that any major changes in neighborhoods would result in additional public input opportunities for the residents.

Council Member Braun added that since the adjacent cities' trails will eventually connect to Addison's there should be a master map/plan. Ms. Tidwell responded that she currently serves on a North Central Texas Council of Governments Trail System Advisory Committee and this subject has been discussed with the committee.

Ms. Tidwell advised that some of the trails in Phase 1 of the Plan are already funded, and for future trails, discussions with developers will occur that could possibly exchange required dedicated parkland for trails.

Council Member Willesen advised that he would like additional time to study the draft Plan and to hold another work session with Council for further discussion.

Mayor Chow expressed that Addison has several major construction projects planned for the next five to eight years and adding to that with extensive trail construction would be disruptive.

REGULAR MEETING

Announcements and Acknowledgements regarding Town and Council Events and Activities

Discussion of Events/Meetings

Public Comment: *The City Council invites citizens to address the City Council on any matter, including items on the agenda, except public hearings that are included on the agenda. Comments related to public hearings will be heard when the specific hearing starts. Citizen comments are limited to **three (3) minutes**, unless otherwise required by law. To address the Council, please fill out a **City Council Appearance Card** and submit it to a staff member prior to the Public Comment item on the agenda. The Council is not permitted to take any action or discuss any item not listed on the agenda. The Council may choose to place the item on a future agenda.*

City Secretary Parker advised that no citizens had requested to address the City Council via telephonic means.

Consent Agenda: *All items listed under the Consent Agenda are considered routine by the City Council and will be enacted by one motion with no individual consideration. If individual consideration of an item is requested, it will be pulled from the Consent Agenda and discussed separately.*

4. **Consider Action to Approve the Minutes from the February 9, 2021 Council Meeting.**
5. **Consider Action on an Ordinance Amending Outdated and Inapplicable Language in Code of Ordinances Chapter 2 (Administration) Article VII (Planning and Zoning Commission).**
6. **Consider Action on an Ordinance Amending Outdated and Inapplicable Language in Code of Ordinances Chapter 2 (Administration) Article VIII (Board of Adjustment).**

Mayor Chow asked if there were any requests to remove an item from the Consent Agenda for separate discussion. There were no items removed for separate discussion.

MOTION: Council Member Hughes moved to approve Consent Agenda Items 4, 5, and 6 as submitted. Council Member Willesen seconded the motion. Motion carried unanimously.

Ordinance No. O21-07: Amend Code of Ordinances Chapter 2 (Administration) Article VII (Planning and Zoning Commission).

Ordinance No. O21-08: Amend Code of Ordinances Chapter 2 (Administration) Article VIII (Board of Adjustment).

Regular Items

7. **Hold a Public Hearing, Present, Discuss, and Consider Action on a Resolution Nominating Bank of America Corporation, Located at 16001 Dallas Parkway, to the Office of the Governor, Economic Development & Tourism Through the Texas Economic Development Bank as an Enterprise Project under the Texas Enterprise Zone Act.**

Orlando Campos, Director of Economic Development and Tourism, presented this item. He advised that Bank of America, located at 16001 Dallas Parkway, in Addison has formally requested a nomination from the Town of Addison to be considered as a Texas Enterprise Zone Project to the Office of the Governor Economic Development & Tourism through the Texas Economic Development Bank. Bank of America engaged Ernst & Young to assist in completing the application for the company. Mr. Campos added that two Addison Companies have been previously approved for this designation, Mary Kay Cosmetics and Bank of America.

Mr. Campos explained that the Texas Enterprise Zone Program is a State supported and managed incentive program to encourage private investment and job creation in economically distressed areas or for companies who employ individuals from economically distress areas. He advised that

in 2020 the Town of Addison nominated Bank of America who received this same designation that included a \$7 million capital improvement renovation for their facility. As part of this 2021 project, Bank of America will be investing \$8.5 million in their facility.

Mr. Campos noted that Bank of America is Addison's largest private employer with 2,200 existing jobs and occupies 554,176 square feet of space.

Council Member Willeesen inquired if other Addison businesses are informed of these types of programs. Mr. Campos responded that they are however only two have qualified.

Mayor Chow opened the Public Hearing.

Bill Wright spoke on behalf of Bank of America and expressed appreciation for the opportunity to partner with the Town of Addison.

Mayor Chow closed the public hearing.

MOTION: Council Member Willeesen moved to approve as presented. Council Member Braun seconded the motion. Motion carried unanimously.

Resolution No. R21-013: Nominating Bank of America Corporation as an Enterprise Project under the Texas Enterprise Zone Act.

8. Present and Discuss the Finance Department Quarterly Financial Report of the Town of Addison for the Fiscal Year 2021 First Quarter Ended December 31, 2020.

Steven Glickman, Chief Financial Officer, presented this item. He reviewed that the Town of Addison's financial policies require the publication of a financial report 60 days subsequent to the end of each fiscal quarter. This report covered the financial performance for the first quarter for Fiscal Year 2021 (October 1, 2020 - December 31, 2020).

Mr. Glickman provided an overview of some of the key revenue sources, noting that hotel taxes, fines and penalties, and special events revenue were less than budgeted. He added that fuel flowage fees revenue exceeded the budget. Expenditures were overall less than budgeted. Financial indicators along with more detailed exhibits for revenues and expenditures were provided for the following funds: General, Hotel, Economic Development, Airport, Utility, and Stormwater funds.

Mr. Glickman provided an overview of the Investment Report for the first quarter.

** * * Note: Executive Session * * **

Closed (Executive) Session of the Addison City Council pursuant to: Section 551.074, Tex. Gov. Code, to deliberate the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee, pertaining to:

- City Attorney’s Annual Evaluation

Mayor Chow closed the Open Session to convene the City Council into Closed Executive Session at 9:00 p.m.

Reconvene into Regular Session: In accordance with Texas Government Code, Chapter 551, the City Council will reconvene into Regular Session to consider action, if any, on matters discussed in Executive Session.

Mayor Chow reconvened the City Council into Open Session at 10:53 p.m. No action was taken as a result of Executive Session.

Adjourn Meeting

There being no further business to come before the Council, Mayor Chow adjourned the meeting.

TOWN OF ADDISON, TEXAS

Joe Chow, Mayor

ATTEST:

Irma G. Parker, City Secretary

Council Meeting

3.

Meeting Date: 03/09/2021

Department: Special Events

Pillars: Optimize the Addison Brand

AGENDA CAPTION:

Consider Action on a **Resolution to Approve an Events Agreement Between the Town of Addison and DCO Realty, Inc. for the Management, Operation, Coordination, and Control of a Variety of Events at Vitruvian Park, and Authorize the City Manager to Execute the Agreement** in an Amount Not to Exceed \$185,000.

BACKGROUND:

The Town of Addison and DCO Realty, Inc., the developer/manager of Vitruvian Park, entered into an event sponsorship reimbursement agreement in 2012 that is presented to Council for renewal annually. DCO Realty, Inc. desires to conduct and present a variety of public events within the Vitruvian Park area. The Town desires to participate in the public events and activities as a sponsor and as such, entered into this agreement with DCO Realty, Inc. for sponsorship reimbursement purposes in the amount of \$185,000.

These funds are used as referenced below:

- Vitruvian Lights Holiday Display
- Vitruvian Nights Live
- Vitruvian Salsa Festival
- Additional events as funds are available

From 2015-2020, Town staff managed the bidding and procurement of the holiday lighting contractor to install, maintain, and remove the light display each season. The cost for this was funded directly from the sponsorship funds before any remaining funds were allocated to DCO Realty, Inc. For Fiscal Year 2021 the agreement has been updated to provide all sponsorship funds directly to DCO Realty upon successful completion of each event, allowing the company to solicit and obtain its own lighting contractor. Exhibit C lists guidelines and specifications that must be met by DCO Realty and its selected lighting contractor to ensure continuity of quality execution. This agreement will cover the Fiscal Year 2021 event season.

The amount for this agreement is budgeted in the Hotel Fund and is included in the Fiscal Year 2021 budget.

RECOMMENDATION:

Administration recommends approval.

Attachments

Resolution - Vitruvian Park Events Agreement

RESOLUTION NO. R21-__

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING AN EVENTS AGREEMENT BETWEEN THE TOWN AND DCO REALTY, INC. FOR THE MANAGEMENT, OPERATION, COORDINATION AND CONTROL OF A VARIETY OF EVENTS AT VITRUVIAN PARK; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Addison is authorized by Chapter 351 of the Texas Property Tax Code to levy a hotel occupancy tax to be used to directly enhance and promote tourism and the convention and hotel industry; and

WHEREAS, the Vitruvian Nights Live, Vitruvian Lights, Vitruvian Salsa Festival and other special events conducted by DCO Realty, Inc. within Vitruvian Park bring thousands of visitors and tourists to the Town of Addison, many of whom will stay at Addison hotels.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

SECTION 1. The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

SECTION 2. The Events Agreement between Town of Addison and DCO Realty, Inc. for the management, operation, coordination and control of a variety of events at Vitruvian Park, a copy of which is attached to this Resolution as **Exhibit A**, is hereby approved. The City Manager is hereby authorized to execute the Agreement.

SECTION 3. This Resolution shall take effect from and after its date of adoption.

DULY RESOLVED AND ADOPTED by the City Council of the Town of Addison, Texas on this the **9th** day of **MARCH 2021**.

TOWN OF ADDISON, TEXAS

Joe Chow, Mayor

ATTEST:

APPROVED AS TO FORM:

Irma G. Parker, City Secretary

Brenda N. McDonald, City Attorney

EXHIBIT A

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

EVENTS AGREEMENT

This Events Agreement (“Agreement”) is made and entered into as of the 19th day of February, 2021 (“Effective Date”) by and between the Town of Addison, Texas (“City” or “Addison”) and DCO Realty, Inc., a Delaware corporation (“DCO”) (the City and DCO are sometimes referred to herein together as the “parties” and individually as a “party”).

Recitals:

1. Except for properties owned by the City, DCO is the owner, manager, or otherwise has control over that area within the City that is known as Vitruvian Park and that is generally located along each side of Vitruvian Way, south of Spring Valley Road, and east of Marsh Lane.
2. DCO desires to conduct and present a variety of public events and activities within that area as described herein, and the City desires to participate in the public events and activities as set forth in this Agreement.
3. The public events and activities within Vitruvian Park attract individuals throughout the region to the City.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter set forth, the benefits flowing to each of the parties hereto, and other good and valuable consideration, the City and DCO do hereby contract and agree as follows:

Section 1. Events; Term. DCO will conduct, present, manage, operate, coordinate, and control a variety of events, including Vitruvian Nights Live, Vitruvian Lights, and Vitruvian Salsa Festival (collectively, the “Events” and each an “Event”), during the period of time from October 1, 2020 to September 30, 2021 (the “Events Period”). The Events will be conducted at and within that area of the City depicted and described in the attached Exhibit A (“Event Site”). A portion of the Event Site is a public park and open space area generally referred to as Vitruvian Park, which portion is shown on Exhibit A (and is referred to herein as the “Vitruvian Park Portion”). DCO is solely responsible for the Events.

DCO will conduct each Event in accordance and compliance with the terms and conditions hereof and all laws, ordinances, rules, regulations, standards, guidelines, and policies of the City or any other governmental authority having jurisdiction over the Event or the Event Site.

Bands and music performers selected to perform at the Events shall not conflict with those scheduled to perform at events produced by City. For the following events, DCO will provide the names of contracted performers as follows:

- Vitruvian Nights Live (June-August 2021) – DCO will provide names of contracted performers (bands) by April 1, 2021.

EXHIBIT A

- Vitruvian Salsa Festival (August 2021) – DCO will provide names of contracted performers (bands) by June 1, 2021.
- Vitruvian Lights (November-December 2020) – DCO canceled these events.

This Agreement shall be effective as of the Effective Date first set forth above and continue in effect through September 30, 2021, subject, however, to the termination provisions of this Agreement.

Section 2. Sponsorship; Sponsorship Benefits. The City will be a sponsor of the Events, as set forth herein. The City shall make available to DCO an annual sponsor fee (the “Sponsor Fee”) in an annual amount not to exceed \$185,000.00 to help cover actual costs of the Events during the Event Period. Parties agree that the Sponsor Fee shall be divided between the Events and made available to DCO not to exceed the amounts provided in the schedule attached hereto as Exhibit D. DCO agrees to use commercially reasonable efforts to ensure that the Vitruvian Lights annual holiday light show conforms to the standards provided in Exhibit C (“Lighting Requirements”). DCO will submit invoices to the City accompanied by receipts or other reasonable evidence of amounts actually incurred in connection with the Events and the City will reimburse DCO within thirty (30) days of receipt of such invoice, not to exceed the Sponsor Fee.

The Events will be designed to enhance and promote the identity of the Vitruvian Park area of Addison, which will in turn benefit retail, restaurant and housing providers in that area. The Events will create an entertainment amenity for all Addison residents and for those that live or work in the surrounding area and for regional tourists. In addition to these benefits to the City, for the City’s sponsorship of each Event, DCO will provide the City with the following benefits:

- (a) a listing of the City logo as a sponsor of the Events on collateral pieces, including but not limited to posters, fliers, invitations, admission passes, tickets, brochures, programs, etc.;
- (b) a listing of the City logo as a sponsor of the Events on all print, broadcast, outdoor and electronic advertising, including but not limited to newspaper ads, magazine ads, radio ads, billboards, newsletters, web communications, etc.;
- (c) a listing of the City as a sponsor of the Events in all press releases, and other communications regarding the Events;
- (d) a listing of the City logo as a sponsor on all street banners and signs in connection with the Events;
- (e) the inclusion of the City logo on the web site (www.vitruvianpark.com) and links to the City’s websites (www.addisontexas.net); and
- (f) provide recognition of the Town of Addison from the stage at the Events.

Section 3. Event Promotion, Advertising. Any promotion or advertising by, for, or on behalf of DCO or the City of any of the Events that references Addison or the Vitruvian Park Portion shall, before being used for promotion or advertising purposes, first be submitted to

Events Agreement - Vitruvian

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EXHIBIT A

Addison or DCO, as applicable, for its prior review and approval (if any), which approval shall not be unreasonably withheld, conditioned or delayed. In the event Addison or DCO, as applicable, fails to disapprove (with specific comments regarding the reason(s) for such disapproval) such promotion or advertising within ten (10) calendar days after the same is submitted (or resubmitted after modifications, as the case may be) to Addison or DCO, as applicable, such promotion or advertising shall be deemed approved. The parties agree that the type of promotions and advertising provided for the same or similar events in the Town of Addison prior to this Agreement are acceptable.

The City will promote the Events and will, among other things, (a) list the Events on the City's website (www.addisontexas.net) with a link to DCO's website (www.vitruvianpark.com), (b) display banners (as approved by the City, if at all and in the City's sole discretion, and subject to availability) across Belt Line Road advertising the Events (which banners, if any, will be supplied by DCO to the City no later than three (3) days prior to display), and (c) promote the Events on the City's social media sites.

Section 4. Termination.

(a) Either party may terminate this Agreement if the other party commits a material breach of this Agreement, and

- (i) such breach remains uncured for a period of 10 calendar days after notice thereof (which notice shall specifically identify the breach) is received by the breaching party, or
- (ii) if the breach cannot with diligence be cured within said 10 day period, if within such period the breaching party provides the non-breaching party written notice of the curative measures which it proposes to undertake, and proceeds promptly to initiate such measures to cure such breach, and thereafter prosecutes the curing of such breach with diligence and continuity, the time within which such failure may be cured shall be extended for such period as may be necessary to complete the curing of such breach with diligence and continuity, not to exceed 30 calendar days following the occurrence of the breach unless otherwise agreed by the parties.

Upon termination of this Agreement by Addison pursuant to this subsection 4(a), Addison will pay to DCO any amounts due pursuant to this Agreement through the date of such notice of breach, but no further or additional payments will be made. Upon termination of this Agreement by DCO pursuant to this subsection 4(a), Addison will pay to DCO any amounts due pursuant to this Agreement through the date of such termination.

(b) This Agreement may also be terminated by either party hereto for any reason or for no reason upon giving at least thirty (30) days written notice of such termination to the other party hereto. If Addison terminates this Agreement pursuant to this subsection 4(b), Addison will pay to DCO any amounts due pursuant to this Agreement through the date of such termination. If DCO terminates this Agreement pursuant to this subsection 4(b), Addison will pay to DCO any amounts then due pursuant to this Agreement through the date of such termination but no further or additional payments will be made.

EXHIBIT A

(c) Payment obligations under this Section 4 shall survive termination of this Agreement.

Section 5. Insurance. At all times in connection with this Agreement, DCO shall purchase and maintain in a company or companies lawfully authorized to do business in Texas such insurance coverages set forth in Section 67-16(b)(4) of the Code of Ordinances of the City, a copy of which is attached as Exhibit B to this Agreement (with the addition that the requirement for commercial general liability shall also include coverage for death); provided, however, that the City Manager may waive the requirement of any of such insurance where, in the sole opinion of the City Manager, such insurance is not necessary to cover or protect a function or purpose of this Agreement.

In addition to the provisions of Section 67-16(b)(4), DCO shall specifically endorse applicable insurance policies as follows:

- (i) The Town of Addison, Texas shall be named as an additional insured with respect to General Liability and Automobile Liability.
- (ii) All liability policies shall contain no cross liability exclusions or insured versus insured restrictions applicable to the claims of the Town of Addison, Texas.
- (iii) A waiver of subrogation in favor of the Town of Addison, Texas, its elected officials, its officers, employees, and agents shall be contained in each policy required herein.
- (iv) Reserved.
- (v) All insurance policies shall be endorsed to the effect that the Town of Addison, Texas will receive at least sixty (60) days' notice prior to cancellation or non-renewal of the insurance.
- (vi) All insurance policies, which name the Town of Addison, Texas as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
- (vii) Required limits may be satisfied by any combination of primary and umbrella liability insurances.
- (viii) DCO may maintain reasonable and customary deductibles, subject to approval by the Town of Addison, Texas.
- (ix) Insurance must be purchased from insurers that are financially acceptable to the Town of Addison, Texas and licensed to do business in the State of Texas.

Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, delivered to DCO and the City prior to the commencement of each Event, and shall:

- (i) List each insurance coverage described and required herein. Such certificates will

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Events Agreement - Vitruvian

EXHIBIT A

also include a copy of the endorsements necessary to meet the requirements and instructions contained herein.

(ii) Specifically set forth the notice-of-cancellation or termination provisions to the Town of Addison.

Upon request, DCO shall furnish the Town of Addison with complete copies of all insurance policies certified to be true and correct by the insurance carrier.

Section 6. **Responsibility, Assumption of Risk.** In connection with the Events and this Agreement and for the consideration set forth herein, **DCO agrees to assume and does hereby assume all responsibility and liability for any and all damages or destruction of any property or personal injuries (including death) to any person of whatsoever kind or nature caused by, arising out of, or in connection with DCO's conducting, presentation, management, operation, coordination, and control of the Events as set forth in Section 1 of this Agreement or by any act or omission of any DCO Persons (as defined in Section 7, below). Addison assumes, and shall have, no responsibility for any property placed by DCO or by any DCO Persons on the Event Site, and DCO hereby RELEASES Addison and all Addison Persons from any and all claims or liabilities of any kind or nature whatsoever for any loss, injury or damages whatsoever to persons or property that are sustained by reason of the occupancy of the Event Site.**

DCO, for itself and the DCO Persons do hereby ASSUME THE RISK of all conditions, whether dangerous or otherwise, in and about the Vitruvian Park Portion, and waive any and all specific notice of the existence of any defective or dangerous condition in or about the same. The provisions of this paragraph shall survive the termination of this Agreement and the Events.

The provisions of this Section shall survive the expiration or termination of this Agreement.

Section 7. **DCO'S INDEMNITY OBLIGATION.** **FOR THE CONSIDERATION SET FORTH IN THIS AGREEMENT, DCO COVENANTS AND AGREES TO FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS ADDISON, ITS ELECTED AND APPOINTED OFFICIALS, ITS OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS, INDIVIDUALLY OR COLLECTIVELY, IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES (COLLECTIVELY, "ADDISON PERSONS" AND EACH AN "ADDISON PERSON"), FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITY, JUDGMENTS, LAWSUITS, DEMANDS, HARM, LOSSES, DAMAGES, PROCEEDINGS, SUITS, ACTIONS, CAUSES OF ACTION, LIENS, FEES, FINES, PENALTIES, EXPENSES, OR COSTS, OF ANY KIND**

EXHIBIT A

AND NATURE WHATSOEVER MADE UPON OR INCURRED BY THE CITY OR ANY OTHER ADDISON PERSON, WHETHER DIRECTLY OR INDIRECTLY, (THE "CLAIMS"), THAT ARISE OUT OF, RESULT FROM, OR RELATE TO:

- (1) DCO'S CONDUCTING, PRESENTATION, MANAGEMENT, OPERATION, COORDINATION, AND CONTROL OF THE EVENTS AS SET FORTH IN SECTION 1 OF THIS AGREEMENT,
- (2) REPRESENTATIONS OR WARRANTIES BY DCO UNDER THIS AGREEMENT,
- (3) ANY PERSONAL INJURIES (INCLUDING BUT NOT LIMITED TO DEATH) TO ANY DCO PERSONS (AS HEREINAFTER DEFINED) ARISING OUT OF OR IN CONNECTION WITH DCO'S CONDUCTING, PRESENTATION, MANAGEMENT, OPERATION, COORDINATION, AND CONTROL OF THE EVENTS, AND/OR
- (4) ANY OTHER ACT OR OMISSION UNDER, IN CONNECTION WITH, OR IN PERFORMANCE OF THIS AGREEMENT BY
 - (I) DCO OR BY ANY OF ITS OWNERS, PARTNERS, OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AGENTS, REPRESENTATIVES, CONSULTANTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES, INVITEES, OR CONCESSIONAIRES, OR ANY OTHER PERSON OR ENTITY FOR WHOM DCO IS LEGALLY RESPONSIBLE, BY
 - (II) ANY AFFILIATE OF DCO OR ANY AFFILIATE'S OWNERS, PARTNERS, OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AGENTS, REPRESENTATIVES, CONSULTANTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES, INVITEES, OR CONCESSIONAIRES, OR OF ANY OTHER PERSON OR ENTITY FOR WHOM SUCH AFFILIATE IS LEGALLY RESPONSIBLE, AND/OR BY
 - (III) THE RESPECTIVE OWNERS, PARTNERS, OFFICERS, MANAGERS, EMPLOYEES, DIRECTORS, AGENTS, REPRESENTATIVES, CONSULTANTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES, AND CONCESSIONAIRES OF THE ENTITIES AND PERSONS DESCRIBED IN THE FOREGOING (I) AND (II) (THE ENTITIES AND PERSONS DESCRIBED IN THE FOREGOING (I), (II), AND (III) BEING COLLECTIVELY "DCO PERSONS").

SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE DAMAGES ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF ADDISON AND/OR ANY OTHER ADDISON PERSON, OR CONDUCT BY ANY ADDISON AND/OR ANY OTHER ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, BUT DOES NOT INCLUDE ANY CLAIMS FOUND TO BE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ADDISON AND/OR ANY OTHER ADDISON PERSON. HOWEVER, DCO'S LIABILITY UNDER THIS CLAUSE SHALL BE REDUCED BY THAT PORTION OF THE TOTAL AMOUNT OF THE CLAIMS (INCLUDING DEFENSE FEES AND COSTS) EQUAL TO THE ADDISON PERSON OR ADDISON PERSONS' PROPORTIONATE SHARE OF THE NEGLIGENCE, OR CONDUCT THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, THAT CAUSED THE LOSS.

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Events Agreement - Vitruvian

EXHIBIT A

FOR PURPOSES HEREOF, "AFFILIATE" MEANS (A) ALL PERSONS, CORPORATIONS, AND OTHER ENTITIES, IF ANY, CONTROLLED BY DCO, (B) ALL PERSONS, CORPORATIONS, AND OTHER ENTITIES WHICH CONTROL DCO ("PARENT"), AND (C) ALL PERSONS, CORPORATIONS, AND OTHER ENTITIES CONTROLLED BY A PARENT; AND "CONTROL" MEANS THE POSSESSION, DIRECTLY OR INDIRECTLY, OF THE POWER TO DIRECT OR CAUSE THE DIRECTION OF THE MANAGEMENT AND POLICIES OF AN ENTITY, WHETHER THROUGH OWNERSHIP OF VOTING SECURITIES OR PARTNERSHIP INTERESTS, BY CONTRACT, OR OTHERWISE.

EACH PARTY SHALL PROMPTLY ADVISE THE OTHER PARTY IN WRITING OF ANY CLAIM OR DEMAND AGAINST ANY ADDISON PERSON, DCO, OR ANY DCO PERSON RELATED TO OR ARISING OUT OF DCO'S ACTIVITIES UNDER THIS AGREEMENT, AND, TO THE EXTENT REQUIRED UNDER THIS SECTION 7, DCO SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT DCO'S SOLE COST AND EXPENSE. THE ADDISON PERSONS SHALL HAVE THE RIGHT, AT THE ADDISON PERSONS' OPTION AND AT OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING DCO OF ANY OF ITS OBLIGATIONS HEREUNDER.

THE PROVISIONS OF THIS DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

Section 8. Miscellaneous.

(a) *Notices.* For purposes of this Agreement and except as otherwise provided for in this Agreement, notices and all other communications provided for herein shall be in writing, addressed as provided hereinafter to the party to whom the notice or request is given, and shall be either (i) delivered personally, (ii) sent by United States certified mail, postage prepaid, return receipt requested, or (iii) placed in the custody of Federal Express Corporation or other nationally recognized carrier to be delivered next business day. Notice shall be deemed given when received if delivered personally or if sent by Federal Express or other nationally recognized carrier; or seventy-two (72) hours after deposit if sent by certified mail.

Addresses for notices and communications are as follows:

<u>To DCO:</u>	<u>To Addison:</u>
c/o UDR, Inc. 1745 Shea Center Drive, Suite 200 Highlands Ranch, CO 80129 Attn: Legal Department	Town of Addison, Texas 5300 Belt Line Road Dallas, Texas 75254 Attn: City Manager

From time to time either party may designate another address within the United States for all purposes of this Agreement by giving the other party not less than ten (10) days advance notice of such change of address in accordance with the provisions hereof.

(b) *Independent Contractors.* This Agreement shall not be deemed to create a joint venture, joint enterprise, partnership, principal-agent, employer-employee or similar relationship

EXHIBIT A

between DCO and Addison. DCO and Addison are and shall be acting as independent contractors under this Agreement.

(c) *Assignment; Binding Agreement.* DCO shall not, and has no authority to, assign, sell, pledge, transfer, encumber, or otherwise convey (any of the foregoing, and the occurrence of any of the foregoing, a “Conveyance”) in any manner or form whatsoever (including by operation of law, by merger, or otherwise) all or part of its rights and obligations hereunder without the prior written approval of the City. Any Conveyance of any kind or by any method without the City’s prior written consent shall be null and void. This Agreement shall be binding on and inure to the benefit of the parties, their respective permitted successors and permitted assigns.

(d) *Construction of Terms.* For purposes of this Agreement, (i) “includes” and “including” are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded, and (ii) “day” or “days” means calendar days. The use of any gender in this Agreement shall be applicable to all genders, and the use of singular number shall include the plural and conversely. Article and section headings are for convenience only and shall not be used in interpretation of this Agreement.

(e) *Rights, Remedies; Waiver.* Except as set forth in or otherwise limited by this Agreement, the remedies and rights set forth in this Agreement: (a) are and shall be in addition to any and all other remedies and rights either party may have at law, in equity, or otherwise, (b) shall be cumulative, and (c) may be pursued successively or concurrently as either party may elect. The exercise of any remedy or right by either party shall not be deemed an election of remedies or rights or preclude that party from exercising any other remedies or rights in the future. Any rights and remedies either party may have with respect to the other arising out of this Agreement shall survive the expiration or termination of this Agreement. All waivers must be in writing and signed by the waiving party.

(f) *Entire Agreement; Amendment.* This Agreement represents the entire and integrated agreement between DCO and the City with regard to the matters set forth herein and supersedes all prior negotiations, representations and/or agreements, either written or oral. Any amendment or modification of this Agreement must be in writing and signed by authorized representatives of DCO and the City or it shall have no effect and shall be void.

(g) *No Third Party Benefits.* This Agreement and each of its provisions are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.

(h) *Immunity.* Notwithstanding any other provision of this Agreement, nothing in this Agreement shall or may be deemed to be, or shall or may be construed to be, a waiver or relinquishment of any immunity, defense, or tort limitation to which the City, its officials, officers, employees, representatives, and agents are or may be entitled, including, without limitation, any waiver of immunity to suit.

(i) *Severability.* The terms, conditions, and provisions of this Agreement are severable, and if any provision of this Agreement shall be held to be invalid, illegal or

EXHIBIT A

unenforceable by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.

(j) *Governing Law; Venue.* This Agreement and performance hereunder shall be governed by and construed in accordance with the laws of the State of Texas, without regard to choice of laws rules of any jurisdiction. Any and all suits, actions or legal proceedings relating to this Agreement shall be maintained in the state or federal courts of Dallas County, Texas, which courts shall have exclusive jurisdiction for such purpose. Each of the parties submits to the exclusive jurisdiction of such courts for purposes of any such suit, action, or legal proceeding hereunder, and waives any objection or claim that any such suit, action, or legal proceeding has been brought in an inconvenient forum or that the venue of that suit, action, or legal proceeding is improper.

(k) *Recitals; Exhibits.* The Recitals to this Agreement are incorporated into this Agreement and made a part hereof for all purposes. All appendices and exhibits to this Agreement referenced in this Agreement are incorporated herein by reference and made a part hereof for all purposes wherever reference is made to the same.

(l) *Authorized Signatories.* The officers and/or agents of the parties hereto executing this Agreement are the properly authorized officials or representatives and have the necessary authority to execute this Agreement on behalf of each of the respective parties, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

(m) *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and same instrument.

(n) *No Boycott – Israel.* Pursuant to Texas Government Code Chapter 2270, Organization’s execution of this Agreement shall serve as verification that the Organization does not presently boycott Israel and will not boycott Israel during the term of this Agreement.

(o) *Force Majeure.* Except for a party’s obligation to make payment hereunder, neither party shall be liable for any failure or delay in the performance of its obligations due to fire, flood, earthquake, elements of nature or acts of God, acts of war, terrorism, riots, civil disorder, rebellions, epidemic, pandemic, outbreak of communicable disease, quarantines, national or regional emergencies, or other similar cause beyond the reasonable control of the party affected, provided such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented, and provided further that the party hindered or delayed notifies the other party describing the circumstances causing such failure or delay.

In Witness Whereof, the parties hereto have executed this Agreement effective as of Effective Date.


EXHIBIT A

TOWN OF ADDISON, TEXAS

By: _____
Wesley S. Pierson, City Manager

Date: _____

DCO REALTY, INC.

By:  _____
Harry G. Alcock, Authorized Agent

Date: 2/22/21 _____

Events Agreement - Vitruvian

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EXHIBIT A

EXHIBIT B

Section 67-16(b)(4), Code of Ordinances

- (4) *Insurance.* The promoter of a district event or host of a non-district event held on public property and all contractors and subcontractors shall purchase and maintain insurance at their own expense during the event and its setup and teardown in the following minimum amounts:
- a. Statutory limits of workers compensation insurance.
 - b. Employers liability \$1,000,000.00.
 - c. Commercial general liability \$1,000,000.00.
 - d. General aggregate \$2,000,000.00.
 - e. Product/completed operations aggregate \$2,000,000.00.
 - f. Personal injury and advertising \$1,000,000.00.
 - g. Per occurrence \$1,000,000.00.
 - h. Medical coverage \$5,000.00 per person.
 - i. Fire liability \$50,000.00 per fire.
 - j. Liquor liability endorsement \$1,000,000.00 per claim.
 - k. Comprehensive automobile liability \$1,000,000.00 (owned, leased, non-owned and hired automobiles).

The committee shall review the sufficiency of required policies and, based on the nature of the event, request reasonable changes or increases in coverage. Upon such request, the promoter shall immediately increase the limits of such insurance to an amount satisfactory to the town and make other reasonable changes requested. The amount required by the committee shall be commensurate with other events of the nature of the subject event.

Required policies shall be issued by a carrier that is rated "A-VII" or better by A.M. Best's Key Rating Guide and licensed to do business in the State of Texas, name the Town of Addison as an additional insured on a primary basis in all liability coverages, and include a waiver of the subrogation endorsement in all coverages in favor of Addison.

Certificates of insurance shall be delivered to the special event manager at least 30 days prior to the first day of the district event. Each such certificate must provide that it shall not be canceled without at least 30 days written notice thereof being given to the Town of Addison. Certified copies of insurance policies shall be furnished to the Town of Addison upon request.

EXHIBIT A

EXHIBIT C

Vitruvian Lights Tree Lighting Requirements

Approximately 555 trees are to be wrapped with LED lights for a nightly display that runs from the Friday after Thanksgiving through January 1. The lights shall be fully operational and turned on from 5:00 p.m. to 11:00 p.m. daily during the stated period.

In addition to the nightly light display, DCO will host three (3) special events at Vitruvian Park. These shall take place on the Friday after Thanksgiving and the first two Saturdays in December (with the option to reschedule due to inclement weather as needed).

I. Installation Timeline

1. Light installation will be completed in early November.
2. The artificial tree, historically installed, will be installed by mid-November.
3. A minimum of two (2) lighting tests will be completed prior to Thanksgiving.
4. The lighting display will operate daily from the Friday after Thanksgiving through January 1 from 5:00 p.m. to 11:00 p.m.
5. Light removal from all Town of Addison trees shall be completed in the first two (2) weeks of January.
6. Light removal from all remaining trees shall be completed by the end of January.

II. Installation Locations

1. Tree Lights
 - i. Vitruvian Park
 - a. Monument Sign
 - b. Interior
 - c. Amphitheater
 - d. Grotto
 - e. Islands
 - f. Observation Deck
 - g. Trail
 - h. Belvedere
 - i. Restrooms
2. Vitruvian Way
 - i. Medians
 - ii. Vitruvian Way & Ponte Avenue corners
 - iii. Vitruvian Way & Spring Valley corners
3. Access Road & Bella Lane
4. Ponte Avenue
 - i. Retail areas
 - ii. Ponte Avenue Parking Lot
5. Artificial Tree
 - i. Ponte Avenue Circle

III. DCO Responsibilities

1. Select, hire and compensate a vendor for lighting installation, management and removal.
 - i. Ensure vendor complies with all applicable laws, rules, regulations and procedures in the execution of this project.
 - ii. Ensure vendor receives clear direction and management in the execution of this project.

EXHIBIT A

2. Supply functional LED lights to vendor.
3. Ensure electrical outlets and timers on electrical panels are functional
 - i. Ponte Avenue Parking Lot
 - ii. Sand Volleyball Courts

IV. Town of Addison Responsibilities

1. Provide at least one Parks Department staff member for onsite support during all three (3) special events.
2. Provide at least one Public Works & Engineering Department staff member for onsite support during the Lighting Ceremony on the Friday after Thanksgiving. Events Agreement – Vitruvian 14
3. Ensure electrical outlets and timers on electrical panels are functional in all areas owned and/or managed by the Town of Addison.
4. Provide at least one Public Works & Engineering Department staff member for onsite support when the vendor accesses Town of Addison electrical cabinets. Date and time for such access to be coordinated between DCO, Town of Addison and vendor.

EXHIBIT A

EXHIBIT D

Schedule of Sponsor Fee Payment

Subject to the payment terms and conditions detailed above in Section 2 of this Agreement, the parties agree that all Event-specific Sponsor Fees shall be paid following successful completion of the related Event. If successful completion of an individual Event is not possible due to Force Majeure, as defined in Section 8(o) of the Agreement, Addison agrees to pay DCO the Event-specific Sponsor Fee amount in accordance with the Agreement.

NAME OF EVENT	SPONSOR FEE TOTAL
Vitruvian Lights Light Show	\$155,000.00
Vitruvian Lights Event	\$10,000.00
Vitruvian Nights Live Event	\$5,000.00
Vitruvian Salsa Festival Event	\$15,000.00
TOTALS	\$185,000.00

Council Meeting

4.

Meeting Date: 03/09/2021

Department: Police

Pillars: Gold Standard in Public Safety

Milestones: Promote and protect the Addison Way
Define and promote Addison Identity

AGENDA CAPTION:

Present, Discuss, and Consider Action to **Accept the Addison Police Department's 2020 Racial Profiling Report and Motor Vehicle Contact Search Analysis.**

BACKGROUND:

The Addison Police Department must comply with the Texas Racial Profiling Law. The statute requires the collection and annual reporting / analysis of motor vehicle related contact data for the purpose of identifying and addressing (if necessary) areas of concern regarding racial profiling practices.

The Addison Police Department department submitted its motor vehicle related contact data to Del Carmen Consulting, LLC for analysis, and the results are included within the 2020 Racial Profiling Report as required by law.

The 2020 Racial Profiling Report concludes that Addison Police Officers are finding contraband when expected based on sound law enforcement practices and not due to a focus on a person's race, ethnicity, or biased-based factors.

The 2020 Racial Profiling Report verifies that the Addison Police Department is in full compliance with the state racial profiling statute regarding prevention policies, data collection, vehicle search analysis and reporting.

RECOMMENDATION:

Administration recommends approval.

Attachments

Presentation - Racial Profiling Report

Racial Profiling Report

2020 Racial Profiling Report



Addison Police Department
Chief Paul Spencer

Texas Racial Profiling Law



- **SB 1074 (2001)** – Created Texas Racial Profiling Law
- **HB 3389 (2009)**– Updated requirements to the Racial Profiling Law
- **Sandra Bland Act (2017)**– Major changes to Racial Profiling Law

Requires us to collect specific data on all vehicle stops that result in an arrest, citation, or warning.

Required Data Collection



- Race
- Gender
- Was race known prior to stop?
- Reason for stop
- Stop location
- Search conducted?
- Reason for search
- Contraband found?
- Contraband type
- Result of stop
- If arrest, what violation?
- Use of force on stop?

Data is entered by officers into electronic Ticket Writers and then checked and analyzed for accuracy by Crime Analyst and racial profiling expert Dr. Alex del Carmen.

Data Audit and Analysis



- Data is audited by Dr. del Carmen each quarter from a random sample of citations. Data completeness and accuracy is evaluated during each audit.
- The Sandra Bland Act requires comprehensive analysis of the data. This is performed by Dr. del Carmen and included in the report.

Other Requirements



- Agency policy on racial profiling and bias reduction
- Public education on filing compliments & complaints
 - Website and brochures at Town Hall and PD Lobby
- Training for all sworn officers on racial profiling
 - Completed in police academy or departmental in-service training
- Quarterly video review of random sample of traffic stops
 - Supervisor reviews 5 traffic stops from each officer
 - Texas Police Chiefs Association (TPCA) Best Practices

2020 Data



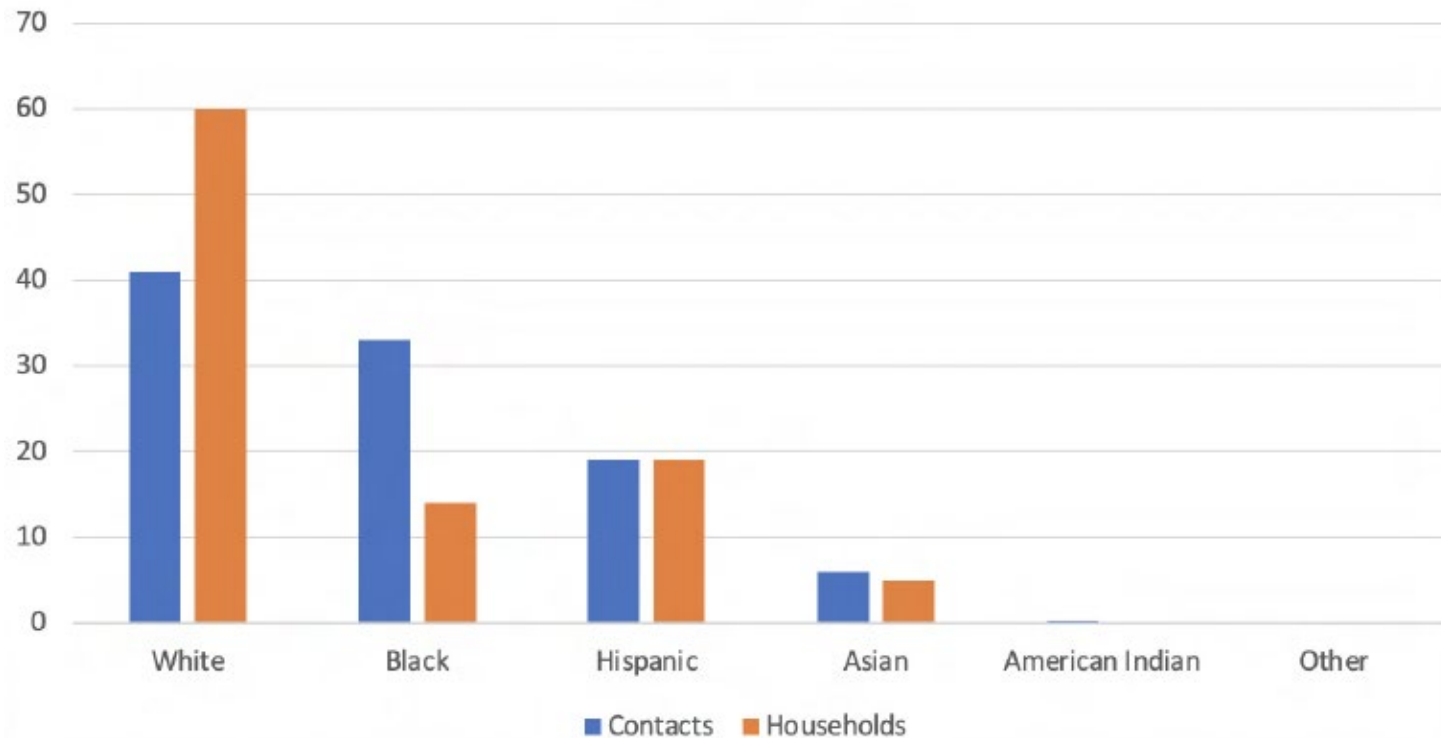
Motor Vehicle Contacts Including Tickets, Citations and Warnings

Race/Ethnicity	All Motor Vehicle Contracts		Tickets or Citations*		Verbal Warnings		Written Warnings	
	N	%	N	%	N	%	N	%
White	1,189	41	277	38	0	0	864	42
Black	966	33	232	32	0	0	690	33
Hispanic or Latino	555	19	163	22	0	0	365	18
Asian or Pacific Islander	170	6	44	6	0	0	125	6
Alaska Native or American Indian	2	.3	0	0	0	0	2	.09
Middle Eastern	34	1	9	1	0	0	25	1
TOTAL	2,916	100	725	100	0	0	2,071	100

2020 Data



Motor Vehicle Contacts and Households
(Percentages) 2020



2020 Data



Search Data

Race/Ethnicity	Searches		Contraband/ Evidence Found		Contraband/ Evidence Not Found		Arrests	
	N	%	N	%	N	%	N	%
White	76	35	30	30	46	39	51	38
Black	97	44	49	49	48	40	53	39
Hispanic or Latino	45	21	21	21	24	20	30	22
Asian or Pacific Islander	1	.5	0	0	1	.8	2	1
Alaska Native or American Indian	0	0	0	0	0	0	0	0
TOTAL	219	100	100	100	119	100	136	100

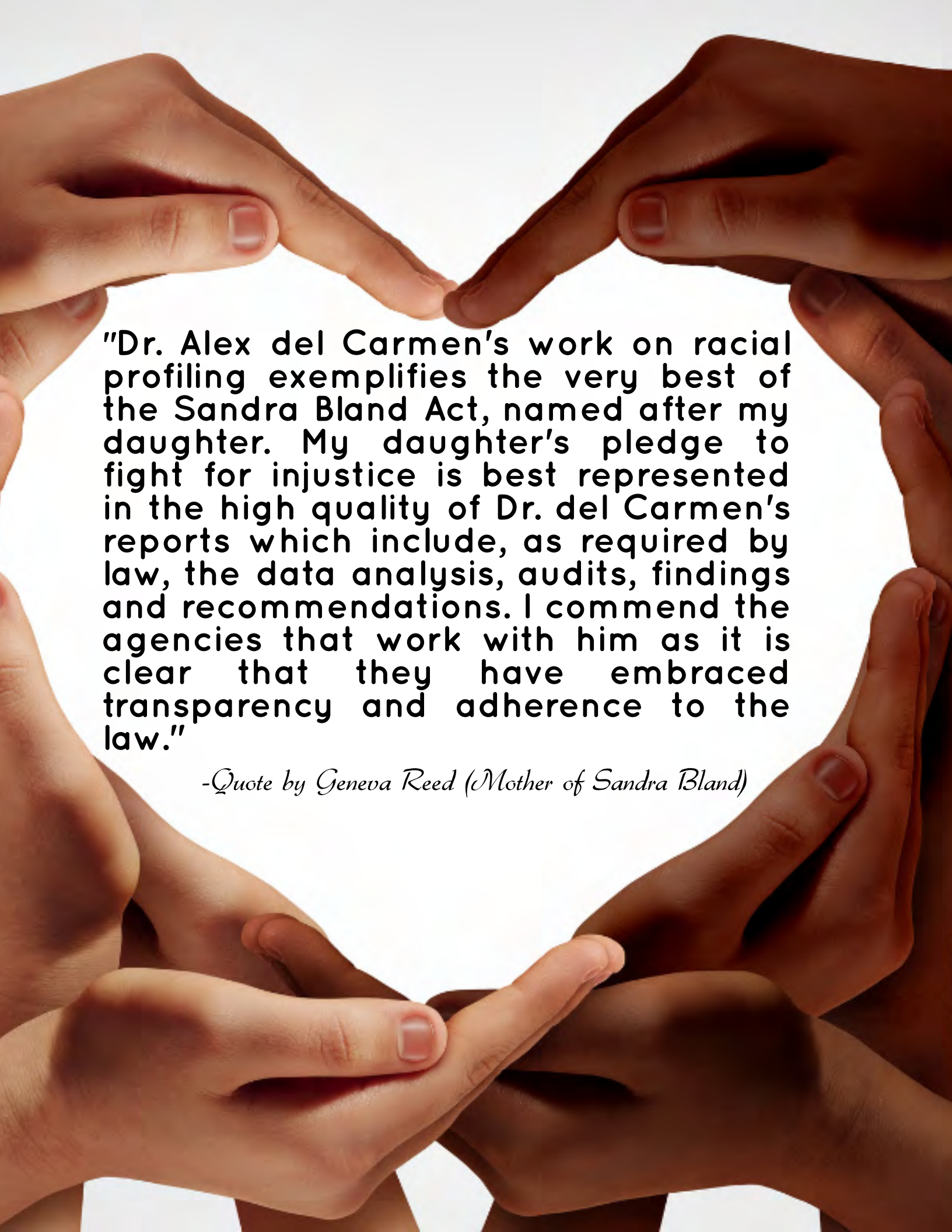


- Full report on Racial Profiling has been submitted to the Texas Commission on Law Enforcement and is available to the public on the TCOLE website:
 - <https://www.tcole.texas.gov/content/racial-profiling-reports>
- Addison is in full compliance with all directives and laws governing racial profiling.

Addison POLICE DEPARTMENT 2020

RACIAL PROFILING REPORT

SANDRA BLAND ACT



"Dr. Alex del Carmen's work on racial profiling exemplifies the very best of the Sandra Bland Act, named after my daughter. My daughter's pledge to fight for injustice is best represented in the high quality of Dr. del Carmen's reports which include, as required by law, the data analysis, audits, findings and recommendations. I commend the agencies that work with him as it is clear that they have embraced transparency and adherence to the law."

-Quote by Geneva Reed (Mother of Sandra Bland)



February 24, 2021
Addison City Council
4799 Airport Parkway
Addison, Texas 75001

Dear Distinguished Members of the City Council,

The Texas Legislature, with the intent of addressing the issue of racial profiling in policing, enacted in 2001, the Texas Racial Profiling Law. During the past year, the Addison Police Department, in accordance with the law, has collected and reported motor vehicle-related contact data for the purpose of identifying and addressing (if necessary) areas of concern regarding racial profiling practices. In the 2009 Texas legislative session, the Racial Profiling Law was modified and additional requirements were implemented. Moreover, in 2017, the Sandra Bland Act was passed and signed into law (along with HB 3051 which introduced new racial and ethnic designations). The Sandra Bland Law requires that law enforcement agencies in the state collect additional data and provide a more detailed analysis. All of these requirements have been met by the Addison Police Department and are included in this report.



This particular report contains three sections with information on motor vehicle-related contact data. In addition, when appropriate, documentation is also a component of this report, aiming at demonstrating the manner in which the Addison Police Department has complied with the Texas Racial Profiling Law. In section 1, you will find the table of contents in addition to the Texas Senate Bill (SB1074); which later became the Texas Racial Profiling Law. Further, you will find the Texas HB 3389, which, in 2009, introduced new requirements relevant to racial profiling as well as the Sandra Bland Act. Also, in this section, a list of requirements relevant to the Racial Profiling Law as established by TCOLE (Texas Commission on Law Enforcement) is included. In addition, you will find, in sections 2 and 3 documentation which demonstrates compliance by the Addison Police Department relevant to the requirements as established in the Texas Racial Profiling Law. That is, you will find documents relevant to the implementation of an institutional policy banning racial profiling, the incorporation of a racial profiling complaint process and the training administered to all law enforcement personnel.

The last section of this report includes statistical data relevant to contacts, made during the course of motor vehicle stops and in accordance with the law, between 1/1/20 and 12/31/20. In addition, this section contains the TCOLE Tier 2 form, which is required to be submitted to this particular organization by March 1st of each year. The data in this report has been analyzed and compared to data derived from the U.S. Census Bureau's Fair Roads Standard. The final analysis and recommendations are also included in this report. The findings in this report serve as evidence of the Addison Police Department's commitment to comply with the Texas Racial Profiling Law.

Sincerely,

Alex del Carmen, Ph.D.

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Responding to the Law



Public Education on Filing Compliments and Complaints

Informing the Public on the Process of Filing a Compliment or Complaint with the Addison Police Department

The Texas Racial Profiling Law requires that police agencies provide information to the public regarding the manner in which to file a compliment or racial profiling complaint. In an effort to comply with this particular component, the Addison Police Department launched an educational campaign aimed at informing the public on issues relevant to the racial profiling complaint process.

The police department made available, in the lobby area and on its web site, information relevant to filing a compliment and complaint on a racial profiling violation by a Addison Police officer. In addition, each time an officer issues a citation, ticket or warning, information on how to file a compliment or complaint is given to the individual cited. This information is in the form of a web address (including in the document issued to the citizen), which has instructions and details specifics related to the compliment or complaint processes.

It is believed that through these efforts, the community has been properly informed of the new policies and the complaint processes relevant to racial profiling.

All Addison Police officers have been instructed, as specified in the Texas Racial Profiling Law, to adhere to all Texas Commission on Law Enforcement (TCOLE) training and the Law Enforcement Management Institute of Texas (LEMIT) requirements. To date, all sworn officers of the Addison Police Department have completed the TCOLE basic training on racial profiling. The main outline used to train the officers of Addison has been included in this report.

It is important to recognize that the Chief of the Addison Police Department has also met the training requirements, as specified by the Texas Racial Profiling Law, in the completion of the LEMIT program on racial profiling. The satisfactory completion of the racial profiling training by the sworn personnel of the Addison Police Department fulfills the training requirement as specified in the Education Code (96.641) of the Texas Racial Profiling Law.

Racial Profiling

Course Number 3256

Texas Commission on Law Enforcement

September 2001

Racial Profiling 3256

Instructor's Note:

You may wish to teach this course in conjunction with Asset Forfeiture 3255 because of the related subject matter and applicability of the courses. If this course is taught in conjunction with Asset Forfeiture, you may report it under Combined Profiling and Forfeiture 3257 to reduce data entry.

Abstract

This instructor guide is designed to meet the educational requirement for racial profiling established by legislative mandate: 77R-SB1074.

Target Population: Licensed law enforcement personnel in Texas

Prerequisites: Experience as a law enforcement officer

Length of Course: A suggested instructional time of 4 hours

Material Requirements: Overhead projector, chalkboard and/or flip charts, video tape player, handouts, practical exercises, and demonstrations

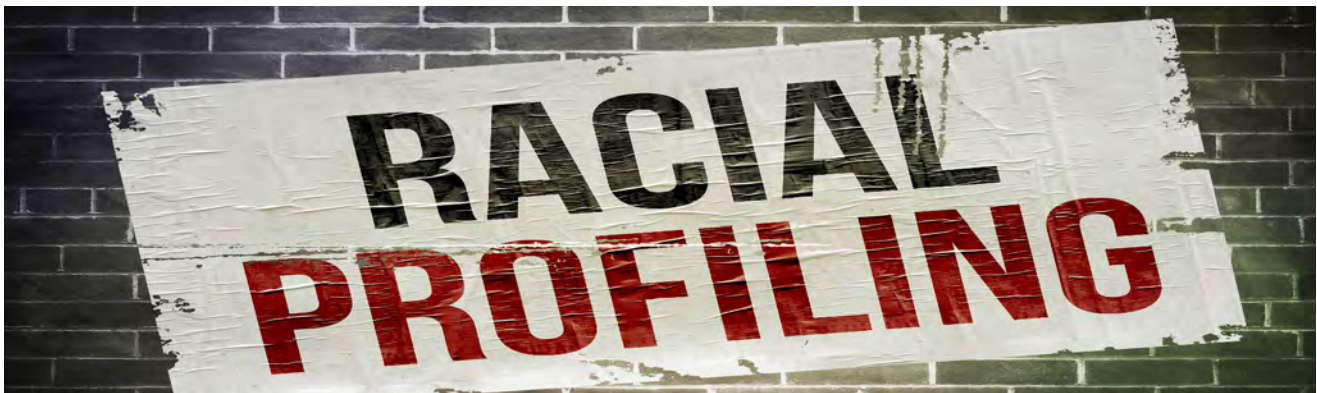
Instructor Qualifications: Instructors should be very knowledgeable about traffic stop procedures and law enforcement issues

Evaluation Process and Procedures

An examination should be given. The instructor may decide upon the nature and content of the examination. It must, however, sufficiently demonstrate the mastery of the subject content by the student.

Reference Materials

Reference materials are located at the end of the course. An electronic copy of this instructor guide may be downloaded from our web site at <http://www.tcleose.state.tx.us>.



Racial Profiling 3256

1.0 RACIAL PROFILING AND THE LAW

1.1 UNIT GOAL: The student will be able to identify the legal aspects of racial profiling.

1.1.1 LEARNING OBJECTIVE: The student will be able to identify the legislative requirements placed upon peace officers and law enforcement agencies regarding racial profiling.

Racial Profiling Requirements:

Racial profiling CCP 3.05

Racial profiling prohibited CCP 2.131

Law enforcement policy on racial profiling CCP 2.132

Reports required for traffic and pedestrian stops CCP 2.133

Liability CCP 2.136

Racial profiling education for police chiefs Education Code 96.641

Training program Occupations Code 1701.253

Training required for intermediate certificate Occupations Code 1701.402

Definition of "race or ethnicity" for form Transportation Code 543.202

A. Written departmental policies

1. Definition of what constitutes racial profiling
2. Prohibition of racial profiling
3. Complaint process
4. Public education
5. Corrective action
6. Collection of traffic-stop statistics
7. Annual reports

B. Not prima facie evidence

C. Feasibility of use of video equipment

D. Data does not identify officer

E. Copy of complaint-related video evidence to officer in question

F. Vehicle stop report

1. Physical description of detainees: gender, race or ethnicity
2. Alleged violation
3. Consent to search
4. Contraband
5. Facts supporting probable cause
6. Arrest
7. Warning or citation issued

G. Compilation and analysis of data

H. Exemption from reporting - audio/video equipment

I. Officer non-liability

J. Funding

K. Required training in racial profiling

1. Police chiefs
2. All holders of intermediate certificates and/or two-year-old licenses as of 09/01/2001 (training to be completed no later than 09/01/2003) - see legislation 77R-SB1074



Racial Profiling

Course Number 3256

Texas Commission on Law Enforcement

September 2001

1.1.2 LEARNING OBJECTIVE: The student will become familiar with Supreme Court decisions and other court decisions involving appropriate actions in traffic stops.

A. Whren v. United States, 517 U.S. 806, 116 S.Ct. 1769 (1996)

1. Motor vehicle search exemption
2. Traffic violation acceptable as pretext for further investigation
3. Selective enforcement can be challenged

B. Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868 (1968)

1. Stop & Frisk doctrine
2. Stopping and briefly detaining a person
3. Frisk and pat down

C. Other cases

1. Pennsylvania v. Mimms, 434 U.S. 106, 98 S.Ct. 330 (1977)
2. Maryland v. Wilson, 117 S.Ct. 882 (1997)
3. Graham v. State, 119 MdApp 444, 705 A.2d 82 (1998)
4. Pryor v. State, 122 Md.App. 671 (1997) cert. denied 352 Md. 312, 721 A.2d 990 (1998)
5. Ferris v. State, 355 Md. 356, 735 A.2d 491 (1999)
6. New York v. Belton, 453 U.S. 454 (1981)



2.0 RACIAL PROFILING AND THE COMMUNITY

2.1 UNIT GOAL: The student will be able to identify logical and social arguments against racial profiling.

2.1.1 LEARNING OBJECTIVE: The student will be able to identify logical and social arguments against racial profiling.

A. There are appropriate reasons for unusual traffic stops (suspicious behavior, the officer's intuition, MOs, etc.), but police work must stop short of cultural stereotyping and racism.

B. Racial profiling would result in criminal arrests, but only because it would target all members of a race randomly – the minor benefits would be far outweighed by the distrust and anger towards law enforcement by minorities and the public as a whole .

C. Racial profiling is self-fulfilling bad logic: if you believed that minorities committed more crimes, then you might look for more minority criminals, and find them in disproportionate numbers.

D. Inappropriate traffic stops generate suspicion and antagonism towards officers and make future stops more volatile – a racially-based stop today can throw suspicion on tomorrow's legitimate stop.

E. By focusing on race, you would not only be harassing innocent citizens, but overlooking criminals of all races and backgrounds – it is a waste of law enforcement resources.



Racial Profiling

Course Number 3256

Texas Commission on Law Enforcement

September 2001

3.0 RACIAL PROFILING VERSUS REASONABLE SUSPICION

3.1 UNIT GOAL: The student will be able to identify the elements of both inappropriate and appropriate traffic stops.

3.1.1 LEARNING OBJECTIVE: The student will be able to identify elements of a racially motivated traffic stop.

A. Most race-based complaints come from vehicle stops, often since race is used as an inappropriate substitute for drug courier profile elements

B. "DWB" - "Driving While Black" - a nickname for the public perception that a Black person may be stopped solely because of their race (especially with the suspicion that they are a drug courier), often extended to other minority groups or activities as well ("Driving While Brown," "Flying While Black," etc.)

C. A typical traffic stop resulting from racial profiling

1. The vehicle is stopped on the basis of a minor or contrived traffic violation which is used as a pretext for closer inspection of the vehicle, driver, and passengers
2. The driver and passengers are questioned about things that do not relate to the traffic violation
3. The driver and passengers are ordered out of the vehicle
4. The officers visually check all observable parts of the vehicle
5. The officers proceed on the assumption that drug courier work is involved by detaining the driver and passengers by the roadside
6. The driver is asked to consent to a vehicle search - if the driver refuses, the officers use other procedures (waiting on a canine unit, criminal record checks, license-plate checks, etc.), and intimidate the driver (with the threat of detaining him/her, obtaining a warrant, etc.)



3.1.2 LEARNING OBJECTIVE: The student will be able to identify elements of a traffic stop which would constitute reasonable suspicion of drug courier activity.

A. Drug courier profile (adapted from a profile developed by the DEA)

1. Driver is nervous or anxious beyond the ordinary anxiety and cultural communication styles
2. Signs of long-term driving (driver is unshaven, has empty food containers, etc.)
3. Vehicle is rented
4. Driver is a young male, 20-35
5. No visible luggage, even though driver is traveling
6. Driver was over-reckless or over-cautious in driving and responding to signals
7. Use of air fresheners

B. Drug courier activity indicators by themselves are usually not sufficient to justify a stop

3.1.3 LEARNING OBJECTIVE: The student will be able to identify elements of a traffic stop which could constitute reasonable suspicion of criminal activity.

A. Thinking about the totality of circumstances in a vehicle stop

B. Vehicle exterior

1. Non-standard repainting (esp. on a new vehicle)
2. Signs of hidden cargo (heavy weight in trunk, windows do not roll down, etc.)
3. Unusual license plate suggesting a switch (dirty plate, bugs on back plate, etc.)
4. Unusual circumstances (pulling a camper at night, kids' bikes with no kids, etc.)

C. Pre-stop indicators

1. Not consistent with traffic flow
2. Driver is overly cautious, or driver/passengers repeatedly look at police car
3. Driver begins using a car- or cell-phone when signaled to stop
4. Unusual pull-over behavior (ignores signals, hesitates, pulls onto new street, moves objects in car, etc.)

D. Vehicle interior

1. Rear seat or interior panels have been opened, there are tools or spare tire, etc.
2. Inconsistent items (anti-theft club with a rental, unexpected luggage, etc.)

Resources

Proactive Field Stops Training Unit – Instructor's Guide, Maryland Police and Correctional Training Commissions, 2001. (See Appendix A.)

Web address for legislation 77R-SB1074: <http://tlo2.tlc.state.tx.us/tlo/77r/billtext/SB01074F.htm>

Report on Compliments and Racial Profiling Complaints



Report on Complaints

The following table contains data regarding officers that have been the subject of a complaint, during the time period of 1/1/20-12/31/20 based on allegations outlining possible violations related to the Texas Racial Profiling Law. The final disposition of the case is also included.

A check above indicates that the Addison Police Department has not received any complaints, on any members of its police force, for having violated the Texas Racial Profiling Law during the time period of 1/1/20-12/31/20.

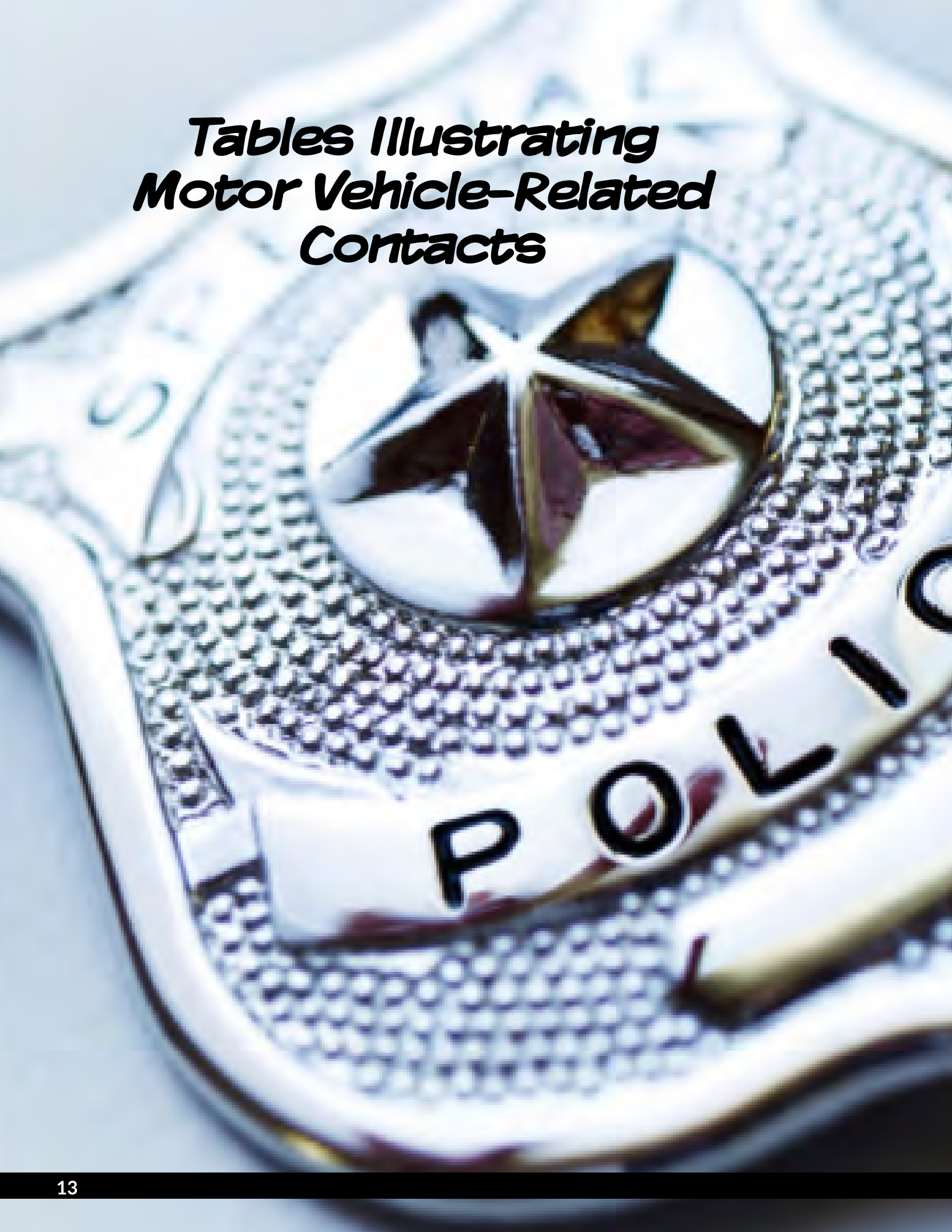
Complaints Filed for Possible Violations of The Texas Racial Profiling Law

Complaint Number	Alleged Violation	Disposition of the Case
20-P-008	Illegal Arrest/Racial Profiling	Unfounded

Additional Comments:

Preliminary complaint, was refuted/unfounded.

***Tables Illustrating
Motor Vehicle-Related
Contacts***



Tier 2 Data





Total stops: 2,916

1. Gender

1.1 Female: **1,084**

1.2 Male: **1,832**

2. Race or ethnicity

2.1 Black: **966**

2.2 Asian/Pacific Islander: **204**

2.3 White: **1,189**

2.4 Hispanic/Latino: **555**

2.5 Alaska Native/American Indian: **2**

3. Was race or ethnicity known prior to stop?

3.1 Yes: **98**

3.2 No: **2,818**

4. Reason for stop?

4.1 Violation of law: **225**

4.2 Pre-existing knowledge: **38**

4.3 Moving traffic violation: **1,876**

4.4 Vehicle traffic violation: **777**



5. Street address or approximate location of the stop

- 5.1 City street: **2,626**
- 5.2 US highway: **0**
- 5.3 County road: **0**
- 5.4 State Highway: **0**
- 5.5 Private Property: **290**

6. Was a search conducted?

- 6.1 Yes: **219**
- 6.2 No: **2,697**

7. Reason for Search?

- 7.1 Consent: **37**
- 7.2 Contraband in plain view: **3**
- 7.3 Probable cause: **50**
- 7.4 Inventory: **0**
- 7.5 Incident to arrest: **129**

8. Was Contraband discovered?

- 8.1 Yes: **100**
- 8.2 No: **119**

9. Description of contraband

- 9.1 Drugs: **76**
- 9.2 Currency: **0**
- 9.3 Weapons: **5**
- 9.4 Alcohol: **8**
- 9.5 Stolen property: **5**
- 9.6 Other: **6**

10. Result of the stop

- 10.1 Verbal warning: **0**
- 10.2 Written warning: **2,065**
- 10.3 Citation: **715**
- 10.4 Written Warning and Arrest: **6**
- 10.5 Citation and Arrest: **10**
- 10.6 Arrest: **120**

11. Arrest based on

- 11.1 Violation of Penal Code: **110**
- 11.2 Violation of Traffic Law: **2**
- 11.3 Violation of City Ordinance: **2**
- 11.4 Outstanding Warrant: **22**

12. Was physical force resulting in bodily injury used during stop?

- 12.1 Yes: **0**
- 12.2 No: **2,916**



Table 1. (Motor Vehicle Contacts Including Tickets, Citations and Warnings). (1/1/20-12/31/20)

Race/Ethnicity	All Motor Vehicle Contacts		Tickets or Citations*		Verbal Warnings		Written Warnings	
	N	%	N	%	N	%	N	%
White	1,189	41	277	38	0	0	864	42
Black	966	33	232	32	0	0	690	33
Hispanic or Latino	555	19	163	22	0	0	365	18
Asian or Pacific Islander	170	6	44	6	0	0	125	6
Alaska Native or American Indian	2	.3	0	0	0	0	2	.09
Middle Eastern	34	1	9	1	0	0	25	1
TOTAL	2,916	100	725	100	0	0	2,071	100

*Includes stops for alleged violation of a law or ordinance, tickets/citations, and verbal and written warnings
 "N" represents "number" of all motor vehicle-related contacts



Table 2. Motor Vehicle Contacts and Fair Roads Standard Comparison

Comparison of motor vehicle-related contacts with households that have vehicle access (in percentages). (1-1-2020 to 12-31-2020).

Race/Ethnicity*	Contacts (in percentages)	Households With Vehicle Access (in percentages)
White	41	60
Black	33	14
Hispanic or Latino	19	19
Asian or Pacific Islander	6	5
Alaska Native or American Indian	.3	0
Middle Eastern	N/A	N/A
TOTAL	100	100

"N" represents "number" of all motor vehicle contacts

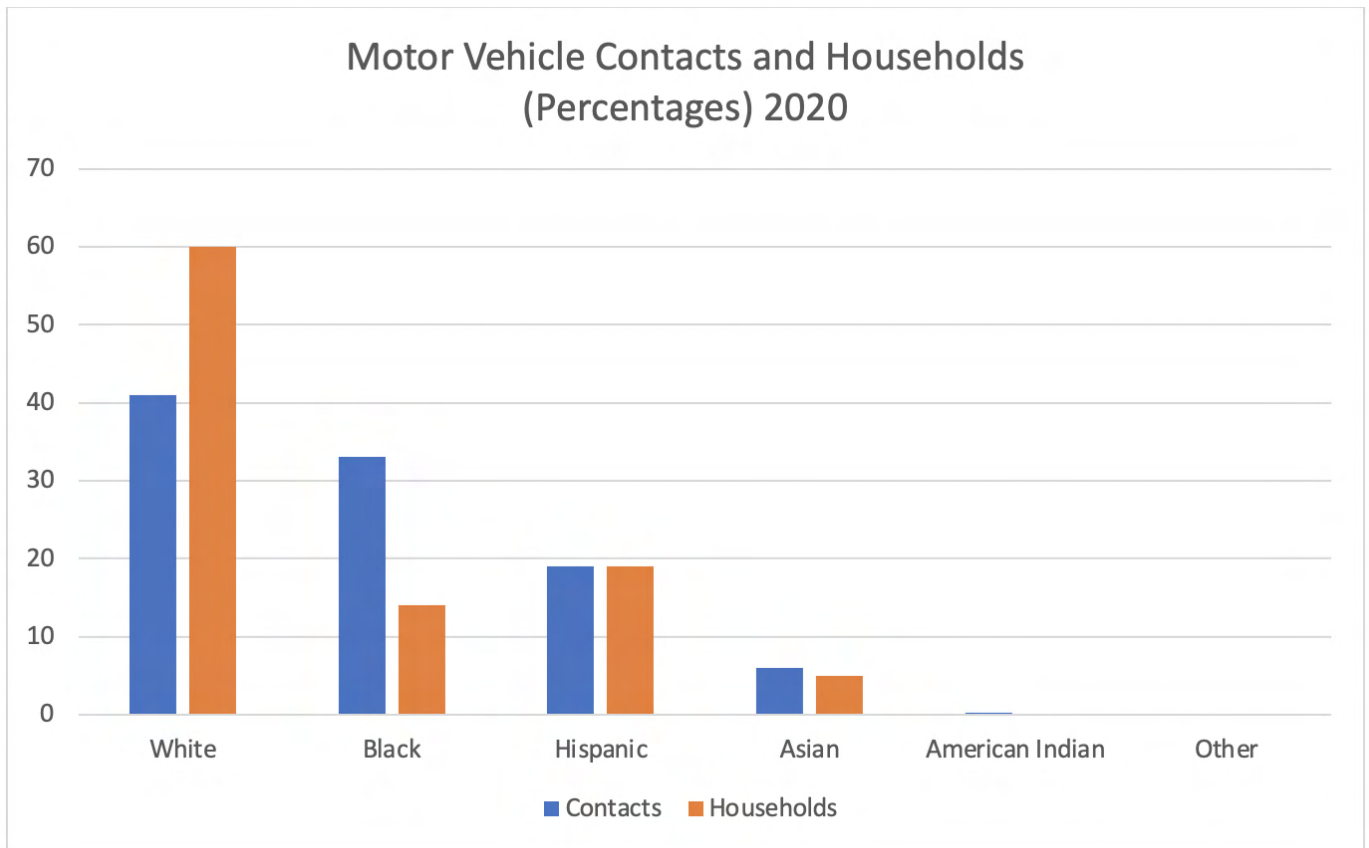


Table 3. Motor Vehicle Searches and Arrests. (1/1/20-12/31/20)

Race/Ethnicity	Searches		Consensual Searches		Custody Arrests	
	N	%	N	%	N	%
White	76	35	15	41	51	38
Black	97	44	17	46	53	39
Hispanic or Latino	45	21	5	13	30	22
Asian or Pacific Islander	1	.5	0	0	2	1
Alaska Native or American	0	0	0	0	0	0
TOTAL	219	100	37	100	136	100

"N" represents "number" of all motor vehicle contacts

** Race/Ethnicity is defined by HB 3051

Table 4. Total Number of Instances where Officers Knew/Did not Know Race/Ethnicity of Individuals Before Being Detained (1-1-2020 to 12-31-2020)

Total Number of Instances Officers <u>KNEW</u> Race and Ethnicity of Individuals Before Being Detained	Total Number of Instances Officers <u>DID NOT KNOW</u> Race and Ethnicity of Individuals Before Being Detained
98	2,818

Table 5 Instances where Peace Officers Used Physical Force that Resulted in Bodily Injury (1-1-2020 to 12-31-2020).

Instances Where Peace Officers Used Physical Force that Resulted in Bodily Injury	Location of Stop	Reason for Stop

Table 6. Search Data (1/1/20-12/31/20)

Race/Ethnicity	Searches		Contraband/ Evidence Found		Contraband/ Evidence Not Found		Arrests	
	N	%	N	%	N	%	N	%
White	76	35	30	30	46	39	51	38
Black	97	44	49	49	48	40	53	39
Hispanic or Latino	45	21	21	21	24	20	30	22
Asian or Pacific Islander	1	.5	0	0	1	.8	2	1
Alaska Native or American	0	0	0	0	0	0	0	0
TOTAL	219	100	100	100	119	100	136	100

"N" represents "number" of all motor vehicle contacts

Table 7. Report on Audits.

The following table contains data regarding the number and outcome of required data audits during the period of 1-1-2020 to 12-31-2020.

Data Audits on Racial Profiling Data (1-1-2020 to 12-31-2020).

Number of Data Audits Completed	Date of Completion	Outcome of Audit
1	04/07/2020	Data reviewed is valid and reliable.
2	07/21/2020	Data reviewed is valid and reliable.
3	10/12/2020	Data reviewed is valid and reliable.
4	12/13/2020	Data reviewed is valid and reliable.

Additional Comments:



*Analysis and
Interpretation of Data*

Analysis and Interpretation of Data

In 2001, the Texas legislature passed Senate Bill 1074 which became the Texas Racial Profiling Law. This particular law came into effect on January 1, 2002 and required all police departments in Texas, to collect traffic-related data and report this information to their local governing authority by March 1st of each year. In 2009, the racial profiling law was modified to include the collection and reporting of all motor vehicle related contacts where a citation was issued or arrest made. In addition, the modification to the law further requires that all police officers indicate whether or not they knew the race or ethnicity of individuals before detaining them. Further, it was required that agencies report motor vehicle related data to their local governing authority and to the Texas Commission on Law Enforcement (TCOLE) by March 1st of each year. The purpose in collecting and disclosing this information is to determine if police officers in a particular municipality are engaging in the practice of racially profiling minority motorists.

The Texas Racial Profiling Law also requires police departments to interpret motor vehicle-related data. Even though most researchers would probably agree with the fact that it is within the confines of good practice for police departments to be accountable to the citizenry while carrying a transparent image before the community, it is very difficult to determine if individual police officers are engaging in racial profiling, from a review and analysis of aggregate/institutional data. In other words, it is challenging for a reputable researcher to identify specific "individual" racist behavior from aggregate-level "institutional" data on traffic or motor vehicle-related contacts.

As referenced earlier, in 2009, the Texas Legislature passed House Bill 3389, which modified the Racial Profiling Law by adding new requirements; this took effect on January 1st, 2010. These changes included, but are were not limited to, the re-definition of a contact to include motor vehicles where a citation was issued or an arrest made. In addition, it required police officers to indicate if they knew the race or ethnicity of the individual before detaining them. Also, the 2009 law required adding "middle eastern" to the racial and ethnic category and submitting the annual data report to TCOLE before March 1st of each year.

In 2017, the Texas Legislators passed H.B. 3051 which removed the Middle Eastern data requirement while standardizing the racial and ethnic categories relevant to the individuals that came in contact with the police. In addition, the Sandra Bland Act (S.B. 1849) was passed and became law. Thus, the most significant legislative mandate (Sandra Bland Act) in Texas history regarding data requirements on law enforcement contacts, became law and took effect on

January 1, 2018. The Sandra Bland Act not only currently requires the extensive collection of data relevant to police motor vehicle contacts, but it also mandates for the data to be analyzed while addressing the following:

1. A comparative analysis of the information compiled (under Article 2.133):

- a. Evaluate and compare the number of motor vehicle stops, within the applicable jurisdiction, of persons who are recognized as racial or ethnic minorities and persons who are not recognized as racial or ethnic minorities;*
- b. Examine the disposition of motor vehicle stops made by officers employed by the agency, categorized according to the race or ethnicity of the affected persons, as appropriate, including any searches resulting from stops within the applicable jurisdiction;*
- c. Evaluate and compare the number of searches resulting from motor vehicle stops within the applicable jurisdiction and whether contraband or other evidence was discovered in the course of those searches.*

2. Information related to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

In an effort to comply with The Texas Racial Profiling/Sandra Bland Law, the Addison Police Department commissioned the analysis of its 2020 contact data. Hence, two different types of data analyses were performed. The first of these involved a careful evaluation of the 2020 motor vehicle-related data. This particular analysis measured, as required by the law, the number and percentage of Whites, Blacks, Hispanics or Latinos, Asians and Pacific Islanders, Alaska Natives and American Indians (Middle Easterners and individuals belonging to the “other” category, as optional categories), that came in contact with the police in the course of a motor vehicle related contact, and were either issued a ticket, citation, warning were issued or an arrest was made. Also, included in this data were instances where a motor vehicle contact took place for an alleged violation of the law or ordinance. The Tier 2 data analysis included, but was not limited to, information relevant to the number and percentage of contacts by race/ethnicity, gender, reason for the stop, location of stop, searches while indicating the type of search performed, result of stop, basis of an arrest and use of physical force resulting in bodily injury.

It should be noted that the additional data analysis performed was based on a comparison of the 2020 motor vehicle contact data with a specific baseline. When reviewing this particular analysis, one should consider that there is disagreement, in the literature, regarding the appropriate baseline to be used when analyzing motor vehicle-related contact information. Of the baseline measures available, the Addison Police Department opted to adopt, as a baseline measure, the Fair Roads Standard. This particular baseline is based on data obtained through the U.S. Census Bureau (2010) relevant to the number of households that have access to vehicles while controlling for the race and ethnicity of the heads of households. It is anticipated that next year, when the 2020 Census findings are available, this information will be updated, accordingly.

There is no question that census data presents challenges to any effort made at establishing a fair and accurate racial profiling analysis. That is, census data contains information on all residents of a particular community, regardless of the fact they may or may not be among the driving population. Further, census data, when used as a baseline of comparison, presents the challenge that it captures information related to city residents only. Thus, excluding individuals who may have come in contact with the Addison Police Department in 2020 but live outside city limits. In some cases, the percentage of the population that comes in contact with the police but lives outside city limits represents a substantial volume of all motor vehicle-related contacts made in a given year.

Since 2002, several civil rights groups in Texas expressed their desire and made recommendations to the effect that all police departments should rely, in their data analysis, on the Fair Roads Standard. This source contains census data specific to the number of “households” that have access to vehicles. Thus, proposing to compare “households” (which may have multiple residents and only a few vehicles) with “contacts” (an individual-based count). This, in essence, constitutes a comparison that may result in ecological fallacy. Despite this, the Addison Police Department accepted the recommendation to utilize this form of comparison (i.e., census data relevant to households with vehicles) in an attempt to demonstrate its “good will” and “transparency” before the community. Thus, the Fair Roads Standard data obtained and used in this study is specifically relevant to the Dallas Fort-Worth Metroplex.

Tier 2 (2020) Motor Vehicle-Related Contact Analysis

When analyzing the enhanced Tier 2 data collected in 2020, it was evident that most motor vehicle-related contacts were made with males and most of the contacts were made with White drivers. This was followed by Black and Hispanic drivers. In most instances, police officers report not knowing the race or ethnicity prior to the stop. Further, they cite as the primary reason for the stop to have been a “moving traffic violation”. This was followed by “vehicle traffic violation”.

In 2020, most of the contacts made took place in city streets. The Addison Police Department cites that most contacts did not result in a search. Of those searches made, most were based on incident to arrest. The second most significant reason for a search was “probable cause”. In addition, in most of the searches, contraband was not found. Of these, in most instances, drugs were cited as the most frequent contraband found.

The data also shows that the majority of stops resulted in a written warning. This was followed by “citation”. When an arrest was made, the most frequent reason provided was a violation of the penal code. Also, none of the contacts resulted in the use of physical force which caused bodily injury.

Comparative Analysis

The data analysis of motor vehicle contacts to the census data relevant to the number of “households” in DFW who indicated, in the 2010 census, that they had access to vehicles, produced interesting findings. Specifically, the percentage of Whites and Hispanics that came in contact with the police was the same or lower than the percentage of White and Hispanic households in DFW that claimed, in the 2010 census, to have access to vehicles. The opposite

was true of Blacks, Asians and American Indians. That is, a higher percentage of Blacks, Asians and American Indians came in contact with the police than the percentage of Black, Asian and American Indian households in DFW that claimed, in the 2010 census, to have access to vehicles. It should be noted that the percentage difference in Asian and American Indian contacts with heads of households was less of 3 percent; thus, deemed by some as being statistically insignificant. The analysis of the searches performed shows that most of the searches did not produce contraband. This is consistent with national law enforcement trends.

Summary of Findings

The most recent Texas Racial Profiling Law requires that police department perform data audits in order to validate the data being reported. Consistent with this requirement, the Addison Police Department has engaged del Carmen Consulting, LLC in order to perform these audits in a manner consistent with normative statistical practices. As shown in table 7, the audits performed have shown that the data is valid and reliable. Further, as required by law, this report also includes an analysis on the searches performed. This analysis includes information on whether contraband was found as a result of the search while controlling for race/ethnicity. The search analysis demonstrates that the police department is engaging in search practices consistent with national trends in law enforcement.

While considering the findings made in this analysis, it is recommended that the Addison Police Department should continue to collect and evaluate additional information on motor vehicle contact data (i.e., reason for probable cause searches, contraband detected) which may prove to be useful when determining the nature of the contacts police officers are making with all individuals.

As part of this effort, the Addison Police Department should continue to:

- 1) Perform an independent analysis on contact and search data in future years.
- 2) Commission data audits in 2021 in order to assess data integrity; that is, to ensure that the data collected is consistent with the data being reported.

The comprehensive analysis of the data included in this report demonstrates that the Addison Police Department has complied with the Texas Racial Profiling Law and all of its requirements. Further, the report demonstrates that the police department has incorporated a comprehensive racial profiling policy, currently offers information to the public on how to file a compliment or complaint, commissions quarterly data audits in order to ensure validity and reliability, collects and commissions the analysis of tier 2 data, and ensures that the practice of racial profiling is not tolerated.



Checklist

The following requirements were met by the Addison Police Department in accordance with The Texas Racial Profiling Law:

- ✓ Implement a Racial Profiling Policy citing act or actions that constitute racial profiling.
- ✓ Include in the racial profiling policy, a statement indicating prohibition of any peace officer employed by the Addison Police Department from engaging in racial profiling.
- ✓ Implement a process by which an individual may file a complaint regarding racial profiling violations.
- ✓ Provide public education related to the complaint and complaint process.
- ✓ Implement disciplinary guidelines for officers found in violation of the Texas Racial Profiling Law.
- ✓ Collect, report and analyze motor vehicle data (Tier 2).
- ✓ Commission Data Audits and a Search Analysis.
- ✓ Indicate total number of officers who knew and did not know, the race/ethnicity of individuals before being detained.
- ✓ Produce an annual report on police contacts (Tier 2) and present this to the local governing body and TCOLE by March 1, 2021.
- ✓ Adopt a policy, if video/audio equipment is installed, on standards for reviewing video and audio documentation.



*Legislative &
Administrative
Addendum*

TCOLE GUIDELINES

Guidelines for Compiling and Reporting Data under Senate Bill 1074

Background

Senate Bill 1074 of the 77th Legislature established requirements in the Texas Code of Criminal Procedure (TCCP) for law enforcement agencies. The Commission developed this document to assist agencies in complying with the statutory requirements.

The guidelines are written in the form of standards using a style developed from accreditation organizations including the Commission on Accreditation for Law Enforcement Agencies (CALEA). The standards provide a description of *what* must be accomplished by an agency but allows wide latitude in determining *how* the agency will achieve compliance with each applicable standard.

Each standard is composed of two parts: the standard statement and the commentary. The *standard statement* is a declarative sentence that places a clear-cut requirement, or multiple requirements, on an agency. The commentary supports the standard statement but is not binding. The commentary can serve as a prompt, as guidance to clarify the intent of the standard, or as an example of one possible way to comply with the standard.

Standard 1

Each law enforcement agency has a detailed written directive that:

- clearly defines acts that constitute racial profiling;
- strictly prohibits peace officers employed by the agency from engaging in racial profiling;
- implements a process by which an individual may file a complaint with the agency if the individual believes a peace officer employed by the agency has engaged in racial profiling with respect to the individual filing the complaint;
- provides for public education relating to the complaint process;
- requires appropriate corrective action to be taken against a peace officer employed by the agency who, after investigation, is shown to have engaged in racial profiling in violation of the agency's written racial profiling policy; and
- requires the collection of certain types of data for subsequent reporting.

Commentary

Article 2.131 of the TCCP prohibits officers from engaging in racial profiling, and article 2.132 of the TCCP now requires a written policy that contains the elements listed in this standard. The article also specifically defines a law enforcement agency as it applies to this statute as an “agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make traffic stops in the routine performance of the officers’ official duties.”

The article further defines race or ethnicity as being of “a particular descent, including Caucasian, African, Hispanic, Asian, or Native American.” The statute does not limit the required policies to just these ethnic groups.

This written policy is to be adopted and implemented no later than January 1, 2002.

Standard 2

Each peace officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic, or who stops a pedestrian for any suspected offense reports to the employing law enforcement agency information relating to the stop, to include:

- a physical description of each person detained, including gender and the person’s race or ethnicity, as stated by the person, or, if the person does not state a race or ethnicity, as determined by the officer’s best judgment;
- the traffic law or ordinance alleged to have been violated or the suspected offense;
- whether the officer conducted a search as a result of the stop and, if so, whether the person stopped consented to the search;
- whether any contraband was discovered in the course of the search, and the type of contraband discovered;
- whether probable cause to search existed, and the facts supporting the existence of that probable cause;
- whether the officer made an arrest as a result of the stop or the search, including a statement of the offense charged;
- the street address or approximate location of the stop; and
- whether the officer issued a warning or citation as a result of the stop, including a description of the warning or a statement of the violation charged.

Commentary

The information required by 2.133 TCCP is used to complete the agency reporting requirements found in Article 2.134. A peace officer and an agency may be exempted from this requirement under Article 2.135 TCCP Exemption for Agencies Using Video and Audio Equipment. An agency may be exempt from this reporting requirement by applying for the funds from the Department of Public Safety for video and audio equipment and the State does not supply those funds. Section 2.135 (a)(2) states, “the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a) (1) (A) and the agency does not receive from the state funds for video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose.”

Standard 3

The agency compiles the information collected under 2.132 and 2.133 and analyzes the information identified in 2.133.

Commentary

Senate Bill 1074 from the 77th Session of the Texas Legislature created requirements for law enforcement agencies to gather specific information and to report it to each county or municipality served. New sections of law were added to the Code of Criminal Procedure regarding the reporting of traffic and pedestrian stops. Detained is defined as when a person stopped is not free to leave.

Article 2.134 TCCP requires the agency to compile and provide an analysis of the information collected by peace officer employed by the agency. The report is provided to the governing body of the municipality or county no later than March 1 of each year and covers the previous calendar year.

There is data collection and reporting required based on Article 2.132 CCP (tier one) and Article 2.133 CCP (tier two).

The minimum requirements for “tier one” data for traffic stops in which a citation results are:

- 1) the race or ethnicity of individual detained (race and ethnicity as defined by the bill means of “a particular descent, including Caucasian, African, Hispanic, Asian, or Native American”);
- 2) whether a search was conducted, and if there was a search, whether it was a consent search or a probable cause search; and
- 3) whether there was a custody arrest.

The minimum requirements for reporting on “tier two” reports include traffic and pedestrian stops. Tier two data include:

- 1) the detained person’s gender and race or ethnicity;
- 2) the type of law violation suspected, e.g., hazardous traffic, non-hazardous traffic, or other criminal investigation (the Texas Department of Public Safety publishes a categorization of traffic offenses into hazardous or non-hazardous);
- 3) whether a search was conducted, and if so whether it was based on consent or probable cause;
- 4) facts supporting probable cause;
- 5) the type, if any, of contraband that was collected;
- 6) disposition of the stop, e.g., arrest, ticket, warning, or release;
- 7) location of stop; and
- 8) statement of the charge, e.g., felony, misdemeanor, or traffic.

Tier one reports are made to the governing body of each county or municipality served by the agency an annual report of information if the agency is an agency of a county, municipality, or other political subdivision of the state. Tier one and two reports are reported to the county or municipality not later than March 1 for the previous calendar year beginning March 1, 2003. Tier two reports include a comparative analysis between the race and ethnicity of persons detained to see if a differential pattern of treatment can be discerned based on the disposition of stops

including searches resulting from the stops. The reports also include information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling. An agency may be exempt from the tier two reporting requirement by applying for the funds from the Department of Public Safety for video and audio equipment and the State does not supply those funds [See 2.135 (a)(2) TCCP].

Reports should include both raw numbers and percentages for each group. Caution should be exercised in interpreting the data involving percentages because of statistical distortions caused by very small numbers in any particular category, for example, if only one American Indian is stopped and searched, that stop would not provide an accurate comparison with 200 stops among Caucasians with 100 searches. In the first case, a 100% search rate would be skewed data when compared to a 50% rate for Caucasians.

Standard 4

If a law enforcement agency has video and audio capabilities in motor vehicles regularly used for traffic stops, or audio capabilities on motorcycles regularly used to make traffic stops, the agency:

- adopts standards for reviewing and retaining audio and video documentation; and
- promptly provides a copy of the recording to a peace officer who is the subject of a complaint on written request by the officer.

Commentary

The agency should have a specific review and retention policy. Article 2.132 TCCP specifically requires that the peace officer be promptly provided with a copy of the audio or video recordings if the officer is the subject of a complaint and the officer makes a written request.

Standard 5

Agencies that do not currently have video or audio equipment must examine the feasibility of installing such equipment.

Commentary

None

Standard 6

Agencies that have video and audio recording capabilities are exempt from the reporting requirements of Article 2.134 TCCP and officers are exempt from the reporting requirements of Article 2.133 TCCP provided that:

- the equipment was in place and used during the proceeding calendar year; and
- video and audio documentation is retained for at least 90 days.

Commentary

The audio and video equipment and policy must have been in place during the previous calendar year. Audio and video documentation must be kept for at least 90 days or longer if a complaint has been filed. The documentation must be retained until the complaint is resolved. Peace officers are not exempt from the requirements under Article 2.132 TCCP.

Standard 7

Agencies have citation forms or other electronic media that comply with Section 543.202 of the Transportation Code.

Commentary

Senate Bill 1074 changed Section 543.202 of the Transportation Code requiring citations to include:

- race or ethnicity, and
- whether a search of the vehicle was conducted and whether consent for the search was obtained.

The Texas Law on Racial Profiling

S.B. No. 1074 - An Act relating to the prevention of racial profiling by certain peace officers.
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 2, Code of Criminal Procedure, is amended by adding Articles 2.131 through 2.138 to read as follows:

Art. 2.131. RACIAL PROFILING PROHIBITED. A peace officer may not engage in racial profiling.

Art. 2.132. LAW ENFORCEMENT POLICY ON RACIAL PROFILING. (a) In this article:

(1) "Law enforcement agency" means an agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make traffic stops in the routine performance of the officers' official duties.

(2) "Race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, or Native American descent.

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

(1) clearly define acts constituting racial profiling;

(2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;

(3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;

(4) provide public education relating to the agency's complaint process;

(5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;

(6) require collection of information relating to traffic stops in which a citation is issued and to arrests resulting from those traffic stops, including information relating to:

(A) the race or ethnicity of the individual detained; and

(B) whether a search was conducted and, if so, whether the person detained consented to the search; and

(7) require the agency to submit to the governing body of each county or municipality served by the agency an annual report of the information collected under Subdivision (6) if the agency is an agency of a county, municipality, or other political subdivision of the state.

(c) The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling.

(d) On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make traffic stops and transmitter-activated equipment in each agency law enforcement motorcycle regularly used to make traffic stops. If a law enforcement agency installs video or audio equipment as provided by this subsection, the

policy adopted by the agency under Subsection (b) must include standards for reviewing video and audio documentation.

(e) A report required under Subsection (b)(7) may not include identifying information about a peace officer who makes a traffic stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the collection of information as required by a policy under Subsection (b)(6).

(f) On the commencement of an investigation by a law enforcement agency of a complaint described by Subsection (b)(3) in which a video or audio recording of the occurrence on which the complaint is based was made, the agency shall promptly provide a copy of the recording to the peace officer who is the subject of the complaint on written request by the officer.

Art. 2.133. REPORTS REQUIRED FOR TRAFFIC AND PEDESTRIAN STOPS. (a) In this article:

(1) "Race or ethnicity" has the meaning assigned by Article 2.132(a).

(2) "Pedestrian stop" means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.

(b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic or who stops a pedestrian for any suspected offense shall report to the law enforcement agency that employs the officer information relating to the stop, including:

(1) a physical description of each person detained as a result of the stop, including:

(A) the person's gender; and

(B) the person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability;

(2) the traffic law or ordinance alleged to have been violated or the suspected offense;

(3) whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;

(4) whether any contraband was discovered in the course of the search and the type of contraband discovered;

(5) whether probable cause to search existed and the facts supporting the existence of that probable cause;

(6) whether the officer made an arrest as a result of the stop or the search, including a statement of the offense charged;

(7) the street address or approximate location of the stop; and

(8) whether the officer issued a warning or a citation as a result of the stop, including a description of the warning or a statement of the violation charged.

Art. 2.134. COMPILATION AND ANALYSIS OF INFORMATION COLLECTED.

(a) In this article, "pedestrian stop" means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.

(b) A law enforcement agency shall compile and analyze the information contained in each report received by the agency under Article 2.133. Not later than March 1 of each year, each local law enforcement agency shall submit a report containing the information compiled

during the previous calendar year to the governing body of each county or municipality served by the agency in a manner approved by the agency.

(c) A report required under Subsection (b) must include:

(1) a comparative analysis of the information compiled under Article 2.133 to:

(A) determine the prevalence of racial profiling by peace officers employed by the agency; and
(B) examine the disposition of traffic and pedestrian stops made by officers employed by the agency, including searches resulting from the stops; and

(2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

(d) A report required under Subsection (b) may not include identifying information about a peace officer who makes a traffic or pedestrian stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the reporting of information required under Article 2.133(b)(1).

(e) The Commission on Law Enforcement Officer Standards and Education shall develop guidelines for compiling and reporting information as required by this article.

(f) The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling.

Art. 2.135. EXEMPTION FOR AGENCIES USING VIDEO AND AUDIO EQUIPMENT. (a) A peace officer is exempt from the reporting requirement under Article 2.133 and a law enforcement agency is exempt from the compilation, analysis, and reporting requirements under Article 2.134 if:

(1) during the calendar year preceding the date that a report under Article 2.134 is required to be submitted:

(A) each law enforcement motor vehicle regularly used by an officer employed by the agency to make traffic and pedestrian stops is equipped with video camera and transmitter-activated equipment and each law enforcement motorcycle regularly used to make traffic and pedestrian stops is equipped with transmitter-activated equipment; and

(B) each traffic and pedestrian stop made by an officer employed by the agency that is capable of being recorded by video and audio or audio equipment, as appropriate, is recorded by using the equipment; or

(2) the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a)(1)(A) and the agency does not receive from the state funds or video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose.

(b) Except as otherwise provided by this subsection, a law enforcement agency that is exempt from the requirements under Article 2.134 shall retain the video and audio or audio documentation of each traffic and pedestrian stop for at least 90 days after the date of the stop. If a complaint is filed with the law enforcement agency alleging that a peace officer employed by the agency has engaged in racial profiling with respect to a traffic or pedestrian stop, the agency shall retain the video and audio or audio record of the stop until final disposition of the complaint.

(c) This article does not affect the collection or reporting requirements under Article 2.132.

Art. 2.136. LIABILITY. A peace officer is not liable for damages arising from an act relating to the collection or reporting of information as required by Article 2.133 or under a policy adopted under Article 2.132.

Art. 2.137. PROVISION OF FUNDING OR EQUIPMENT.

(a) The Department of Public Safety shall adopt rules for providing funds or video and audio equipment to law enforcement agencies for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), including specifying criteria to prioritize funding or equipment provided to law enforcement agencies. The criteria may include consideration of tax effort, financial hardship, available revenue, and budget surpluses. The criteria must give priority to:

(1) law enforcement agencies that employ peace officers whose primary duty is traffic enforcement;

(2) smaller jurisdictions; and

(3) municipal and county law enforcement agencies.

(b) The Department of Public Safety shall collaborate with an institution of higher education to identify law enforcement agencies that need funds or video and audio equipment for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A). The collaboration may include the use of a survey to assist in developing criteria to prioritize funding or equipment provided to law enforcement agencies.

(c) To receive funds or video and audio equipment from the state for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency needs funds or video and audio equipment for that purpose.

(d) On receipt of funds or video and audio equipment from the state for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency has installed video and audio equipment as described by Article 2.135(a)(1)(A) and is using the equipment as required by Article 2.135(a)(1).

Art. 2.138. RULES. The Department of Public Safety may adopt rules to implement Articles 2.131-2.137.

SECTION 2. Chapter 3, Code of Criminal Procedure, is amended by adding Article 3.05 to read as follows:

Art. 3.05. RACIAL PROFILING. In this code, "racial profiling" means a law enforcement-initiated action based on an individual's race, ethnicity, or national origin rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity.

SECTION 3. Section 96.641, Education Code, is amended by adding Subsection (j) to read as follows:

(j) As part of the initial training and continuing education for police chiefs required under this section, the institute shall establish a program on racial profiling. The program must include an examination of the best practices for:

(1) monitoring peace officers' compliance with laws and internal agency policies relating to racial profiling;

(2) implementing laws and internal agency policies relating to preventing racial profiling;
and

(3) analyzing and reporting collected information.

SECTION 4. Section 1701.253, Occupations Code, is amended by adding Subsection (e) to read as follows:

(e) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on racial profiling for officers licensed under this chapter. An officer shall complete a program established under this subsection not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.

SECTION 5. Section 1701.402, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) As a requirement for an intermediate proficiency certificate, an officer must complete an education and training program on racial profiling established by the commission under Section 1701.253(e).

SECTION 6. Section 543.202, Transportation Code, is amended to read as follows:

Sec. 543.202. FORM OF RECORD. (a) In this section, "race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, or Native American descent.

(b) The record must be made on a form or by a data processing method acceptable to the department and must include:

(1) the name, address, physical description, including race or ethnicity, date of birth, and driver's license number of the person charged;

(2) the registration number of the vehicle involved;

(3) whether the vehicle was a commercial motor vehicle as defined by Chapter 522 or was involved in transporting hazardous materials;

(4) the person's social security number, if the person was operating a commercial motor vehicle or was the holder of a commercial driver's license or commercial driver learner's permit;

(5) the date and nature of the offense, including whether the offense was a serious traffic violation as defined by Chapter 522;

(6) whether a search of the vehicle was conducted and whether consent for the search was obtained;

(7) the plea, the judgment, and whether bail was forfeited;

(8) [~~7~~] the date of conviction; and

(9) [~~8~~] the amount of the fine or forfeiture.

SECTION 7. Not later than January 1, 2002, a law enforcement agency shall adopt and implement a policy and begin collecting information under the policy as required by Article 2.132, Code of Criminal Procedure, as added by this Act. A local law enforcement agency shall first submit information to the governing body of each county or municipality served by the agency as required by Article 2.132, Code of Criminal Procedure, as added by this Act, on March 1, 2003. The first submission of information shall consist of information compiled by the agency during the period beginning January 1, 2002, and ending December 31, 2002.

SECTION 8. A local law enforcement agency shall first submit information to the governing body of each county or municipality served by the agency as required by Article 2.134, Code of Criminal Procedure, as added by this Act, on March 1, 2004. The first submission of information shall consist of information compiled by the agency during the period beginning January 1, 2003, and ending December 31, 2003.

SECTION 9. Not later than January 1, 2002:

(1) the Commission on Law Enforcement Officer Standards and Education shall establish an education and training program on racial profiling as required by Subsection (e), Section 1701.253, Occupations Code, as added by this Act; and

(2) the Bill Blackwood Law Enforcement Management Institute of Texas shall establish a program on racial profiling as required by Subsection (j), Section 96.641, Education Code, as added by this Act.

SECTION 10. A person who on the effective date of this Act holds an intermediate proficiency certificate issued by the Commission on Law Enforcement Officer Standards and Education or has held a peace officer license issued by the Commission on Law Enforcement Officer Standards and Education for at least two years shall complete an education and training program on racial profiling established under Subsection (e), Section 1701.253, Occupations Code, as added by this Act, not later than September 1, 2003.

SECTION 11. An individual appointed or elected as a police chief before the effective date of this Act shall complete a program on racial profiling established under Subsection (j), Section 96.641, Education Code, as added by this Act, not later than September 1, 2003.

SECTION 12. This Act takes effect September 1, 2001

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1074 passed the Senate on April 4, 2001, by the following vote: Yeas 28, Nays 2; May 21, 2001, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 22, 2001, House granted request of the Senate; May 24, 2001, Senate adopted Conference Committee Report by a viva-voce vote.

Secretary of the Senate

I hereby certify that S.B. No. 1074 passed the House, with amendments, on May 15, 2001, by a non-record vote; May 22, 2001, House granted request of the Senate for appointment of Conference Committee; May 24, 2001, House adopted Conference Committee Report by a non-record vote.

Chief Clerk of the House

Approved:

Date

Governor

Modifications to the Original Law (H.B. 3389)

Amend CSHB 3389 (Senate committee report) as follows:

(1) Strike the following SECTIONS of the bill:

(A) SECTION 8, adding Section 1701.164, Occupations Code (page 4, lines 61-66);

(B) SECTION 24, amending Article 2.132(b), Code of Criminal Procedure (page 8, lines 19-53);

(C) SECTION 25, amending Article 2.134(b), Code of Criminal Procedure (page 8, lines 54-64);

(D) SECTION 28, providing transition language for the amendments to Articles 2.132(b) and 2.134(b), Code of Criminal Procedure (page 9, lines 40-47).

(2) Add the following appropriately numbered SECTIONS to the bill and renumber subsequent SECTIONS of the bill accordingly: SECTION _____. Article 2.132, Code of Criminal Procedure, is amended by amending Subsections (a),(b), (d), and (e) and adding Subsection (g) to read as follows:

(a) In this article:

(1) "Law enforcement agency" means an agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make motor vehicle~~[traffic]~~ stops in the routine performance of the officers' official duties.

(2) "Motor vehicle stop" means an occasion in which a peace officer stops a motor vehicle for an alleged violation of a law or ordinance.

(3) "Race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, ~~[or]~~ Native American, or Middle Eastern descent.

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

(1) clearly define acts constituting racial profiling;

(2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;

(3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;

(4) provide public education relating to the agency's complaint process;

(5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;

(6) require collection of information relating to motor vehicle ~~[traffic]~~ stops in which a citation is issued and to arrests made as a result of ~~[resulting from]~~ those ~~[traffic]~~ stops, including information relating to:

(A) the race or ethnicity of the individual detained; and

(B) whether a search was conducted and, if so, whether the individual ~~[person]~~ detained consented to the search; and

(C) whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual; and

(7) require the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit ~~[to the governing body of each county or~~

~~municipality served by the agency]~~ an annual report of the information collected under Subdivision (6) to:

(A) the Commission on Law Enforcement Officer Standards and Education; and

(B) the governing body of each county or municipality served by the agency, if the agency is an agency of a county, municipality, or other political subdivision of the state.

(d) On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make motor vehicle ~~[traffic]~~ stops and transmitter activated equipment in each agency law enforcement motorcycle regularly used to make motor vehicle ~~[traffic]~~ stops. If a law enforcement agency installs video or audio equipment as provided by this subsection, the policy adopted by the agency under Subsection (b) must include standards for reviewing video and audio documentation.

(e) A report required under Subsection (b)(7) may not include identifying information about a peace officer who makes a motor vehicle ~~[traffic]~~ stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the collection of information as required by a policy under Subsection (b)(6).

(g) On a finding by the Commission on Law Enforcement Officer Standards and Education that the chief administrator of a law enforcement agency intentionally failed to submit a report required under Subsection (b)(7), the commission shall begin disciplinary procedures against the chief administrator.

SECTION _____. Article 2.133, Code of Criminal Procedure, is amended to read as follows:

Art. 2.133. REPORTS REQUIRED FOR MOTOR VEHICLE ~~[TRAFFIC AND PEDESTRIAN]~~ STOPS. (a) In this article, "race ~~[:~~

~~{(1) "Race]~~ or ethnicity" has the meaning assigned by Article 2.132(a).

~~[(2) "Pedestrian stop" means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.]~~

(b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance ~~[regulating traffic or who stops a pedestrian for any suspected offense]~~ shall report to the law enforcement agency that employs the officer information relating to the stop, including:

(1) a physical description of any ~~[each]~~ person operating the motor vehicle who is detained as a result of the stop, including:

(A) the person's gender; and

(B) the person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability;

(2) the initial reason for the stop ~~[traffic law or ordinance alleged to have been violated or the suspected offense];~~

(3) whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;

(4) whether any contraband or other evidence was discovered in the course of the search and a description ~~[the type]~~ of the contraband or evidence ~~[discovered];~~

(5) the reason for the search, including whether:

(A) any contraband or other evidence was in plain view;

(B) any probable cause or reasonable suspicion existed to perform the search; or

(C) the search was performed as a result of the towing of the motor vehicle or the arrest of any person in the motor vehicle ~~[existed and the facts supporting the existence of that probable cause];~~

(6) whether the officer made an arrest as a result of the stop or the search, including a statement of whether the arrest was based on a violation of the Penal Code, a violation of a traffic law or ordinance, or an outstanding warrant and a statement of the offense charged;

(7) the street address or approximate location of the stop; and

(8) whether the officer issued a written warning or a citation as a result of the stop~~[, including a description of the warning or a statement of the violation charged].~~

SECTION _____. Article 2.134, Code of Criminal Procedure, is amended by amending Subsections (a) through (e) and adding Subsection (g) to read as follows:

(a) In this article:

(1) "Motor vehicle[, "pedestrian] stop" has the meaning assigned by Article 2.132(a) ~~[means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest].~~

(2) "Race or ethnicity" has the meaning assigned by Article 2.132(a).

(b) A law enforcement agency shall compile and analyze the information contained in each report received by the agency under Article 2.133. Not later than March 1 of each year, each ~~[local]~~ law enforcement agency shall submit a report containing the incident-based data ~~[information]~~ compiled during the previous calendar year to the Commission on Law Enforcement Officer Standards and Education and, if the law enforcement agency is a local law enforcement agency, to the governing body of each county or municipality served by the agency ~~[in a manner approved by the agency].~~

(c) A report required under Subsection (b) must be submitted by the chief administrator of the law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, and must include:

(1) a comparative analysis of the information compiled under Article 2.133 to:

(A) evaluate and compare the number of motor vehicle stops, within the applicable jurisdiction, of persons who are recognized as racial or ethnic minorities and persons who are not recognized as racial or ethnic minorities ~~[determine the prevalence of racial profiling by peace officers employed by the agency];~~ and

(B) examine the disposition of motor vehicle ~~[traffic and pedestrian]~~ stops made by officers employed by the agency, categorized according to the race or ethnicity of the affected persons, as appropriate, including any searches resulting from [the] stops within the applicable jurisdiction; and

(2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

(d) A report required under Subsection (b) may not include identifying information about a peace officer who makes a motor vehicle ~~[traffic or pedestrian]~~ stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the reporting of information required under Article 2.133(b)(1).

(e) The Commission on Law Enforcement Officer Standards and Education, in accordance with Section 1701.162, Occupations Code, shall develop guidelines for compiling and reporting information as required by this article.

(g) On a finding by the Commission on Law Enforcement Officer Standards and Education that the chief administrator of a law enforcement agency intentionally failed to submit a report required under Subsection (b), the commission shall begin disciplinary procedures against the chief administrator.

SECTION _____. Article 2.135, Code of Criminal Procedure, is amended to read as follows:

Art. 2.135. PARTIAL EXEMPTION FOR AGENCIES USING VIDEO AND AUDIO EQUIPMENT. (a) A peace officer is exempt from the reporting requirement under Article 2.133 and the chief administrator of a law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, is exempt from the compilation, analysis, and reporting requirements under Article 2.134 if:

(1) during the calendar year preceding the date that a report under Article 2.134 is required to be submitted:

(A) each law enforcement motor vehicle regularly used by an officer employed by the agency to make motor vehicle [~~traffic and pedestrian~~] stops is equipped with video camera and transmitter-activated equipment and each law enforcement motorcycle regularly used to make motor vehicle [~~traffic and pedestrian~~] stops is equipped with transmitter-activated equipment; and

(B) each motor vehicle [~~traffic and pedestrian~~] stop made by an officer employed by the agency that is capable of being recorded by video and audio or audio equipment, as appropriate, is recorded by using the equipment; or

(2) the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a)(1)(A) and the agency does not receive from the state funds or video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose.

(b) Except as otherwise provided by this subsection, a law enforcement agency that is exempt from the requirements under Article 2.134 shall retain the video and audio or audio documentation of each motor vehicle [~~traffic and pedestrian~~] stop for at least 90 days after the date of the stop. If a complaint is filed with the law enforcement agency alleging that a peace officer employed by the agency has engaged in racial profiling with respect to a motor vehicle [~~traffic or pedestrian~~] stop, the agency shall retain the video and audio or audio record of the stop until final disposition of the complaint.

(c) This article does not affect the collection or reporting requirements under Article 2.132.

(d) In this article, "motor vehicle stop" has the meaning assigned by Article 2.132(a).

SECTION _____. Chapter 2, Code of Criminal Procedure, is amended by adding Article 2.1385 to read as follows:

Art. 2.1385. CIVIL PENALTY. (a) If the chief administrator of a local law enforcement agency intentionally fails to submit the incident-based data as required by Article 2.134, the agency is liable to the state for a civil penalty in the amount of \$1,000 for each violation. The attorney general may sue to collect a civil penalty under this subsection.

(b) From money appropriated to the agency for the administration of the agency, the executive director of a state law enforcement agency that intentionally fails to submit the incident-based

data as required by Article 2.134 shall remit to the comptroller the amount of \$1,000 for each violation.

(c) Money collected under this article shall be deposited in the state treasury to the credit of the general revenue fund.

SECTION _____. Subchapter A, Chapter 102, Code of Criminal Procedure, is amended by adding Article 102.022 to read as follows:

Art. 102.022. COSTS ON CONVICTION TO FUND STATEWIDE REPOSITORY FOR DATA RELATED TO CIVIL JUSTICE. (a) In this article, "moving violation" means an offense that:

(1) involves the operation of a motor vehicle; and

(2) is classified as a moving violation by the Department of Public Safety under Section 708.052, Transportation Code.

(b) A defendant convicted of a moving violation in a justice court, county court, county court at law, or municipal court shall pay a fee of 10 cents as a cost of court.

(c) In this article, a person is considered convicted if:

(1) a sentence is imposed on the person;

(2) the person receives community supervision, including deferred adjudication; or

(3) the court defers final disposition of the person's case.

(d) The clerks of the respective courts shall collect the costs described by this article. The clerk shall keep separate records of the funds collected as costs under this article and shall deposit the funds in the county or municipal treasury, as appropriate.

(e) The custodian of a county or municipal treasury shall:

(1) keep records of the amount of funds on deposit collected under this article; and

(2) send to the comptroller before the last day of the first month following each calendar quarter the funds collected under this article during the preceding quarter.

(f) A county or municipality may retain 10 percent of the funds collected under this article by an officer of the county or municipality as a collection fee if the custodian of the county or municipal treasury complies with Subsection (e).

(g) If no funds due as costs under this article are deposited in a county or municipal treasury in a calendar quarter, the custodian of the treasury shall file the report required for the quarter in the regular manner and must state that no funds were collected.

(h) The comptroller shall deposit the funds received under this article to the credit of the Civil Justice Data Repository fund in the general revenue fund, to be used only by the Commission on Law Enforcement Officer Standards and Education to implement duties under Section 1701.162, Occupations Code.

(i) Funds collected under this article are subject to audit by the comptroller.

SECTION _____. (a) Section 102.061, Government Code, as reenacted and amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, is amended to conform to the amendments made to Section 102.061, Government Code, by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, and is further amended to read as follows:

Sec. 102.061. ADDITIONAL COURT COSTS ON CONVICTION IN STATUTORY COUNTY COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a statutory county court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

(1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$20;

(2) a fee for services of the clerk of the court (Art. 102.005, Code of Criminal Procedure) . . . \$40;

- (3) a records management and preservation services fee (Art. 102.005, Code of Criminal Procedure) . . . \$25;
- (4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;
- (5) a juvenile delinquency prevention and graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure) . . . \$50 [~~\$5~~]; [~~and~~]
- (6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5; and
- (7) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

(b) Section 102.061, Government Code, as amended by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, is repealed. Section 102.061, Government Code, as reenacted and amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, to reorganize and renumber that section, continues in effect as further amended by this section.

SECTION _____. (a) Section 102.081, Government Code, as amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, is amended to conform to the amendments made to Section 102.081, Government Code, by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, and is further amended to read as follows:

Sec. 102.081. ADDITIONAL COURT COSTS ON CONVICTION IN COUNTY COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a county court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

- (1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$20;
- (2) a fee for clerk of the court services (Art. 102.005, Code of Criminal Procedure) . . . \$40;
- (3) a records management and preservation services fee (Art. 102.005, Code of Criminal Procedure) . . . \$25;
- (4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;
- (5) a juvenile delinquency prevention and graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure) . . . \$50 [~~\$5~~]; [~~and~~]
- (6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5; and
- (7) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

(b) Section 102.081, Government Code, as amended by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, is repealed. Section 102.081, Government Code, as amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, to reorganize and renumber that section, continues in effect as further amended by this section.

SECTION _____. Section 102.101, Government Code, is amended to read as follows:

Sec. 102.101. ADDITIONAL COURT COSTS ON CONVICTION IN JUSTICE COURT: CODE OF CRIMINAL PROCEDURE. A clerk of a justice court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

- (1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$3;
- (2) a fee for withdrawing request for jury less than 24 hours before time of trial (Art. 102.004, Code of Criminal Procedure) . . . \$3;
- (3) a jury fee for two or more defendants tried jointly (Art. 102.004, Code of Criminal Procedure) . . . one jury fee of \$3;

- (4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$4;
- (5) a fee for technology fund on a misdemeanor offense (Art. 102.0173, Code of Criminal Procedure) . . . \$4;
- (6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5;
- (7) a fee on conviction of certain offenses involving issuing or passing a subsequently dishonored check (Art. 102.0071, Code of Criminal Procedure) . . . not to exceed \$30; ~~and~~
- (8) a court cost on conviction of a Class C misdemeanor in a county with a population of 3.3 million or more, if authorized by the county commissioners court (Art. 102.009, Code of Criminal Procedure) . . . not to exceed \$7; and
- (9) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

SECTION _____. Section 102.121, Government Code, is amended to read as follows:

Sec. 102.121. ADDITIONAL COURT COSTS ON CONVICTION IN MUNICIPAL COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a municipal court shall collect fees and costs on conviction of a defendant as follows:

- (1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$3;
- (2) a fee for withdrawing request for jury less than 24 hours before time of trial (Art. 102.004, Code of Criminal Procedure) . . . \$3;
- (3) a jury fee for two or more defendants tried jointly (Art. 102.004, Code of Criminal Procedure) . . . one jury fee of \$3;
- (4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;
- (5) a fee for technology fund on a misdemeanor offense (Art. 102.0172, Code of Criminal Procedure) . . . not to exceed \$4; ~~and~~
- (6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5; and
- (7) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

SECTION _____. Subchapter D, Chapter 1701, Occupations Code, is amended by adding Section 1701.164 to read as follows:

Sec. 1701.164. COLLECTION OF CERTAIN INCIDENT-BASED DATA SUBMITTED BY LAW ENFORCEMENT AGENCIES. The commission shall collect and maintain incident-based data submitted to the commission under Article 2.134, Code of Criminal Procedure, including incident-based data compiled by a law enforcement agency from reports received by the law enforcement agency under Article 2.133 of that code. The commission in consultation with the Department of Public Safety, the Bill Blackwood Law Enforcement Management Institute of Texas, the W. W. Caruth, Jr., Police Institute at Dallas, and the Texas Police Chiefs Association shall develop guidelines for submitting in a standard format the report containing incident-based data as required by Article 2.134, Code of Criminal Procedure.

SECTION _____. Subsection (a), Section 1701.501, Occupations Code, is amended to read as follows:

- (a) Except as provided by Subsection (d), the commission shall revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a license holder for a violation of:
 - (1) this chapter;

(2) the reporting requirements provided by Articles 2.132 and 2.134, Code of Criminal Procedure;
or

(3) a commission rule.

SECTION _____. (a) The requirements of Articles 2.132, 2.133, and 2.134, Code of Criminal Procedure, as amended by this Act, relating to the compilation, analysis, and submission of incident-based data apply only to information based on a motor vehicle stop occurring on or after January 1, 2010.

(b) The imposition of a cost of court under Article 102.022, Code of Criminal Procedure, as added by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

Racial and Ethnic Designations (H.B. 3051)

H.B. No. 3051 - An Act relating to the categories used to record the race or ethnicity of persons stopped for or convicted of traffic offenses.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 2.132(a)(3), Code of Criminal Procedure, is amended to read as follows:

(3) "Race or ethnicity" means the following categories:

(A) Alaska native or American Indian;

(B) ~~[of a particular descent, including Caucasian, African, Hispanic,]~~ Asian or Pacific Islander;

(C) black;

(D) white; and

(E) Hispanic or Latino ~~[, Native American, or Middle Eastern descent]~~.

SECTION 2. Section 543.202(a), Transportation Code, is amended to read as follows:

(a) In this section, "race or ethnicity" means the following categories:

(1) Alaska native or American Indian;

(2) ~~[of a particular descent, including Caucasian, African, Hispanic,]~~ Asian or Pacific Islander;

(3) black;

(4) white; and

(5) Hispanic or Latino ~~[, or Native American descent]~~.

SECTION 3. This Act takes effect September 1, 2017.

President of the Senate

Speaker of the House

I certify that H.B. No. 3051 was passed by the House on May 4, 2017, by the following vote: Yeas 143, Nays 2, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 3051 was passed by the Senate on May 19, 2017, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor

The Sandra Bland Act

(S.B. 1849)

S.B. No. 1849

An Act relating to interactions between law enforcement and individuals detained or arrested on suspicion of the commission of criminal offenses, to the confinement, conviction, or release of those individuals, and to grants supporting populations that are more likely to interact frequently with law enforcement.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. SHORT TITLE

SECTION 1.01. SHORT TITLE. This Act shall be known as the Sandra Bland Act, in memory of Sandra Bland.

ARTICLE 2. IDENTIFICATION AND DIVERSION OF AND SERVICES FOR PERSONS SUSPECTED OF HAVING A MENTAL ILLNESS, AN INTELLECTUAL DISABILITY, OR A SUBSTANCE ABUSE ISSUE

SECTION 2.01. Article 16.22, Code of Criminal Procedure, is amended to read as follows:

Art. 16.22. EARLY IDENTIFICATION OF DEFENDANT SUSPECTED OF HAVING MENTAL ILLNESS OR INTELLECTUAL DISABILITY [MENTAL RETARDATION]. (a)(1) Not later than 12 [72] hours after receiving credible information that may establish reasonable cause to believe that a defendant committed to the sheriff's custody has a mental illness or is a person with an intellectual disability [mental retardation], including observation of the defendant's behavior immediately before, during, and after the defendant's arrest and the results of any previous assessment of the defendant, the sheriff shall provide written or electronic notice of the information to the magistrate. On a determination that there is reasonable cause to believe that the defendant has a mental illness or is a person with an intellectual disability [mental retardation], the magistrate, except as provided by Subdivision

(2), shall order the local mental health or intellectual and developmental disability [mental retardation] authority or another qualified mental health or intellectual disability [mental retardation] expert to:

(A) collect information regarding whether the defendant has a mental illness as defined by Section 571.003,

Health and Safety Code, or is a person with an intellectual disability [mental retardation] as defined by Section 591.003, Health and Safety Code, including information obtained from any previous assessment of the defendant; and

(B) provide to the magistrate a written assessment of the information collected under Paragraph (A).

(2) The magistrate is not required to order the collection of information under Subdivision (1) if the defendant in the year preceding the defendant's applicable date of arrest has been determined to have a mental illness or to be a person with an intellectual disability [mental retardation] by the local mental health or intellectual and developmental disability [mental retardation] authority or another mental health or intellectual disability [mental retardation] expert described by Subdivision

(1). A court that elects to use the results of that previous determination may proceed under Subsection (c).

(3) If the defendant fails or refuses to submit to the collection of information regarding the defendant as required under Subdivision (1), the magistrate may order the defendant to submit to an examination in a mental health facility determined to be appropriate by the local mental health or intellectual and developmental disability [mental retardation] authority for a reasonable period not to exceed 21 days. The magistrate may order a defendant to a facility operated by the Department of State Health Services or the Health and Human Services Commission [Department of Aging and Disability Services] for examination only on request of the local mental health or intellectual and developmental disability [mental retardation] authority and with the consent of the head of the facility. If a defendant who has been ordered to a facility operated by the Department of State Health Services or the Health and Human Services Commission [Department of Aging and Disability Services] for examination remains in the facility for a period exceeding 21 days, the head of that facility shall cause the defendant to be immediately transported to the committing court and placed in the custody of the sheriff of the county in which the committing court is located. That county shall reimburse the facility for the mileage and per diem expenses of the personnel required to transport the defendant calculated in accordance with the state travel regulations in effect at the time.

(b) A written assessment of the information collected under Subsection (a)(1)(A) shall be provided to the magistrate not later than the 30th day after the date of any order issued under Subsection (a) in a felony case and not later than the 10th day after the date of any order issued under that subsection in a misdemeanor case, and the magistrate shall provide copies of the written assessment to the defense counsel, the prosecuting attorney, and the trial court. The written assessment must include a description of the procedures used in the collection of information under Subsection (a)(1)(A) and the applicable expert's observations and findings pertaining to:

(1) whether the defendant is a person who has a mental illness or is a person with an intellectual disability [mental retardation];

(2) whether there is clinical evidence to support a belief that the defendant may be incompetent to stand trial and should undergo a complete competency examination under Subchapter B, Chapter 46B; and

(3) recommended treatment.

(c) After the trial court receives the applicable expert's written assessment relating to the defendant under Subsection (b)

or elects to use the results of a previous determination as described by Subsection (a)(2), the trial court may, as applicable:

(1) resume criminal proceedings against the defendant, including any appropriate proceedings related to the defendant's release on personal bond under Article 17.032;

(2) resume or initiate competency proceedings, if required, as provided by Chapter 46B or other proceedings affecting the defendant's receipt of appropriate court-ordered mental health or intellectual disability [mental retardation] services, including proceedings related to the defendant's receipt of outpatient mental health services under Section 574.034, Health and Safety Code; or

(3) consider the written assessment during the punishment phase after a conviction of the offense for which the defendant was arrested, as part of a presentence investigation report, or in connection with the impositions of conditions following placement on community supervision, including deferred adjudication community supervision.

(d) This article does not prevent the applicable court from, before, during, or after the collection of information regarding the defendant as described by this article: (1) releasing a defendant who has a mental illness [mentally ill] or is a person with an intellectual disability [mentally retarded defendant] from custody on personal or surety bond; or

(2) ordering an examination regarding the defendant's competency to stand trial.

SECTION 2.02. Chapter 16, Code of Criminal Procedure, is amended by adding Article 16.23 to read as follows:

Art. 16.23. DIVERSION OF PERSONS SUFFERING MENTAL HEALTH CRISIS OR SUBSTANCE ABUSE ISSUE. (a) Each law enforcement agency shall make a good faith effort to divert a person suffering a mental health crisis or suffering from the effects of substance abuse to a proper treatment center in the agency's jurisdiction if:

(1) there is an available and appropriate treatment center in the agency's jurisdiction to which the agency may divert the person;

(2) it is reasonable to divert the person;

(3) the offense that the person is accused of is a misdemeanor, other than a misdemeanor involving violence; and

(4) the mental health crisis or substance abuse issue is suspected to be the reason the person committed the alleged offense.

(b) Subsection (a) does not apply to a person who is accused of an offense under Section 49.04, 49.045, 49.05, 49.06, 49.065, 49.07, or 49.08, Penal Code.

SECTION 2.03. Section 539.002, Government Code, is amended to read as follows:

Sec. 539.002. GRANTS FOR ESTABLISHMENT AND EXPANSION OF COMMUNITY COLLABORATIVES. (a) To the extent funds are appropriated to the department for that purpose, the department shall make grants to entities, including local governmental entities, nonprofit community organizations, and faith-based community organizations, to establish or expand community collaboratives that bring the public and private sectors together to provide services to persons experiencing homelessness, substance abuse issues, or [and] mental illness. [The department may make a maximum of five grants, which must be made in the most populous

municipalities in this state that are located in counties with a population of more than one million.] In awarding grants, the department shall give special consideration to entities:

- (1) establishing [a] new collaboratives; or
 - (2) establishing or expanding collaboratives that serve two or more counties, each with a population of less than 100,000 [collaborative].
- (b) The department shall require each entity awarded a grant under this section to:
- (1) leverage additional funding from private sources in an amount that is at least equal to the amount of the grant awarded under this section; [and]
 - (2) provide evidence of significant coordination and collaboration between the entity, local mental health authorities, municipalities, local law enforcement agencies, and other community stakeholders in establishing or expanding a community collaborative funded by a grant awarded under this section; and
 - (3) provide evidence of a local law enforcement policy to divert appropriate persons from jails or other detention facilities to an entity affiliated with a community collaborative for the purpose of providing services to those persons.

SECTION 2.04. Chapter 539, Government Code, is amended by adding Section 539.0051 to read as follows:

Sec. 539.0051. PLAN REQUIRED FOR CERTAIN COMMUNITY COLLABORATIVES. (a) The governing body of a county shall develop and make public a plan detailing:

- (1) how local mental health authorities, municipalities, local law enforcement agencies, and other community stakeholders in the county could coordinate to establish or expand a community collaborative to accomplish the goals of Section 539.002;
- (2) how entities in the county may leverage funding from private sources to accomplish the goals of Section 539.002 through the formation or expansion of a community collaborative; and
- (3) how the formation or expansion of a community collaborative could establish or support resources or services to help local law enforcement agencies to divert persons who have been arrested to appropriate mental health care or substance abuse treatment.

(b) The governing body of a county in which an entity that received a grant under Section 539.002 before September 1, 2017, is located is not required to develop a plan under Subsection (a).

(c) Two or more counties, each with a population of less than 100,000, may form a joint plan under Subsection (a).

ARTICLE 3. BAIL, PRETRIAL RELEASE, AND COUNTY JAIL STANDARDS

SECTION 3.01. The heading to Article 17.032, Code of Criminal Procedure, is amended to read as follows:

Art. 17.032. RELEASE ON PERSONAL BOND OF CERTAIN [MENTALLY ILL] DEFENDANTS WITH MENTAL ILLNESS OR INTELLECTUAL DISABILITY.

SECTION 3.02. Articles 17.032(b) and (c), Code of Criminal Procedure, are amended to read as follows:

(b) A magistrate shall release a defendant on personal bond unless good cause is shown otherwise if the:

(1) defendant is not charged with and has not been previously convicted of a violent offense;

(2) defendant is examined by the local mental health or intellectual and developmental disability [mental retardation] authority or another mental health expert under Article 16.22 [of this code];

(3) applicable expert, in a written assessment submitted to the magistrate under Article 16.22:

(A) concludes that the defendant has a mental illness or is a person with an intellectual disability [mental retardation] and is nonetheless competent to stand trial; and

(B) recommends mental health treatment or intellectual disability treatment for the defendant, as applicable; and

(4) magistrate determines, in consultation with the local mental health or intellectual and developmental disability [mental retardation] authority, that appropriate community-based mental health or intellectual disability [mental retardation] services for the defendant are available through the [Texas] Department of State [Mental] Health Services [and Mental Retardation] under Section 534.053, Health and Safety Code, or through another mental health or intellectual disability [mental retardation] services provider.

(c) The magistrate, unless good cause is shown for not requiring treatment, shall require as a condition of release on personal bond under this article that the defendant submit to outpatient or inpatient mental health or intellectual disability [mental retardation] treatment as recommended by the local mental health or intellectual and developmental disability [mental retardation] authority if the defendant's:

(1) mental illness or intellectual disability [mental retardation] is chronic in nature; or

(2) ability to function independently will continue to deteriorate if the defendant is not treated.

SECTION 3.03. Article 25.03, Code of Criminal Procedure, is amended to read as follows:

Art. 25.03. IF ON BAIL IN FELONY. When the accused, in case of felony, is on bail at the time the indictment is presented, [it is not necessary to serve him with a copy, but] the clerk shall [on request] deliver a copy of the indictment [same] to the accused or the accused's [his] counsel[,] at the earliest possible time.

SECTION 3.04. Article 25.04, Code of Criminal Procedure, is amended to read as follows:

Art. 25.04. IN MISDEMEANOR. In misdemeanors, the clerk shall deliver a copy of the indictment or information to the accused or the accused's counsel at the earliest possible time before trial [it shall not be necessary before trial to furnish the accused with a copy of the indictment or information; but he or his counsel may demand a copy, which shall be given as early as possible

SECTION 3.05. Section 511.009(a), Government Code, as amended by Chapters 281 (H.B. 875), 648 (H.B. 549), and 688 (H.B. 634), Acts of the 84th Legislature, Regular Session, 2015, is reenacted and amended to read as follows:

- (a) The commission shall:
 - (1) adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails;
 - (2) adopt reasonable rules and procedures establishing minimum standards for the custody, care, and treatment of prisoners;
 - (3) adopt reasonable rules establishing minimum standards for the number of jail supervisory personnel and for programs and services to meet the needs of prisoners;
 - (4) adopt reasonable rules and procedures establishing minimum requirements for programs of rehabilitation, education, and recreation in county jails;
 - (5) revise, amend, or change rules and procedures if necessary;
 - (6) provide to local government officials consultation on and technical assistance for county jails;
 - (7) review and comment on plans for the construction and major modification or renovation of county jails;
 - (8) require that the sheriff and commissioners of each county submit to the commission, on a form prescribed by the commission, an annual report on the conditions in each county jail within their jurisdiction, including all information necessary to determine compliance with state law, commission orders, and the rules adopted under this chapter;
 - (9) review the reports submitted under Subdivision (8) and require commission employees to inspect county jails regularly to ensure compliance with state law, commission orders, and rules
and procedures adopted under this chapter;
 - (10) adopt a classification system to assist sheriffs and judges in determining which defendants are low-risk and consequently suitable participants in a county jail work release program under Article 42.034, Code of Criminal Procedure;
 - (11) adopt rules relating to requirements for segregation of classes of inmates and to capacities for county jails;
 - (12) require that the chief jailer of each municipal lockup submit to the commission, on a form prescribed by the commission, an annual report of persons under 17 years of age securely detained in the lockup, including all information necessary to determine compliance with state law concerning secure confinement of children in municipal lockups;
 - (13) at least annually determine whether each county jail is in compliance with the rules and procedures adopted under this chapter;
 - (14) require that the sheriff and commissioners court of each county submit to the commission, on a form prescribed by the commission, an annual report of persons under 17 years of age securely detained in the county jail, including all information necessary to determine compliance with state law concerning secure confinement of children in county jails;
 - (15) schedule announced and unannounced inspections of jails under the commission's jurisdiction using the risk assessment plan established under Section 511.0085 to guide the inspections process;
 - (16) adopt a policy for gathering and distributing to jails under the commission's

jurisdiction information regarding:

- (A) common issues concerning jail administration;
- (B) examples of successful strategies for maintaining compliance with state law and the rules, standards, and procedures of the commission; and
- (C) solutions to operational challenges for jails;

(17) report to the Texas Correctional Office on Offenders with Medical or Mental Impairments on a jail's compliance with Article 16.22, Code of Criminal Procedure;

(18) adopt reasonable rules and procedures establishing minimum requirements for jails to:

- (A) determine if a prisoner is pregnant; and
- (B) ensure that the jail's health services plan addresses medical and mental health care, including nutritional requirements, and any special housing or work assignment needs for persons who are confined in the jail and are known or determined to be pregnant;

(19) provide guidelines to sheriffs regarding contracts between a sheriff and another entity for the provision of food services to or the operation of a commissary in a jail under the commission's jurisdiction, including specific provisions regarding conflicts of interest and avoiding the appearance of impropriety; [and]

(20) adopt reasonable rules and procedures establishing minimum standards for prisoner visitation that provide each prisoner at a county jail with a minimum of two in-person, noncontact visitation periods per week of at least 20 minutes duration each;

(21) [(20)] require the sheriff of each county to:

- (A) investigate and verify the veteran status of each prisoner by using data made available from the Veterans Reentry Search Service (VRSS) operated by the United States Department of Veterans Affairs or a similar service; and
- (B) use the data described by Paragraph (A) to assist prisoners who are veterans in applying for federal benefits or compensation for which the prisoners may be eligible under a program administered by the United States Department of Veterans Affairs;

(22) [(20)] adopt reasonable rules and procedures regarding visitation of a prisoner at a county jail by a guardian, as defined by Section 1002.012, Estates Code, that:

- (A) allow visitation by a guardian to the same extent as the prisoner's next of kin, including placing the guardian on the prisoner's approved visitors list on the guardian's request and providing the guardian access to the prisoner during a facility's standard visitation hours if the prisoner is otherwise eligible to receive visitors; and
- (B) require the guardian to provide the sheriff with letters of guardianship issued as provided by Section 1106.001, Estates Code, before being allowed to visit the prisoner; and

(23) adopt reasonable rules and procedures to ensure the safety of prisoners, including rules and procedures that require a county jail to:

- (A) give prisoners the ability to access a mental health professional at the jail through a telemental health service 24 hours a day;
- (B) give prisoners the ability to access a health professional at the jail or through a telehealth service 24 hours a day or, if a health professional is unavailable at the jail or through a telehealth service, provide for a prisoner to be transported to access a health professional; and
- (C) if funding is available under Section 511.019, install automated electronic sensors or cameras to ensure accurate and timely in-person checks of cells or groups of cells confining at-risk

individuals.

SECTION 3.06. Section 511.009, Government Code, is amended by adding Subsection (d) to read as follows:

(d) The commission shall adopt reasonable rules and procedures establishing minimum standards regarding the continuity of prescription medications for the care and treatment of prisoners. The rules and procedures shall require that a qualified medical professional shall review as soon as possible any prescription medication a prisoner is taking when the prisoner is taken into custody.

SECTION 3.07. Chapter 511, Government Code, is amended by adding Sections 511.019, 511.020, and 511.021 to read as follows:

Sec. 511.019. PRISONER SAFETY FUND. (a) The prisoner safety fund is a dedicated account in the general revenue fund.

(b) The prisoner safety fund consists of:

(1) appropriations of money to the fund by the legislature; and
(2) gifts, grants, including grants from the federal government, and other donations received for the fund.

(c) Money in the fund may be appropriated only to the commission to pay for capital improvements that are required under Section 511.009(a)(23).

(d) The commission by rule may establish a grant program to provide grants to counties to fund capital improvements described by Subsection (c). The commission may only provide a grant to a county for capital improvements to a county jail with a capacity of not more than 96 prisoners.

Sec. 511.020. SERIOUS INCIDENTS REPORT. (a) On or before the fifth day of each month, the sheriff of each county shall report to the commission regarding the occurrence during the preceding month of any of the following incidents involving a prisoner in the county jail:

(1) a suicide;
(2) an attempted suicide;
(3) a death;
(4) a serious bodily injury, as that term is defined by

Section 1.07, Penal Code;

(5) an assault;
(6) an escape;
(7) a sexual assault; and
(8) any use of force resulting in bodily injury, as that term is defined by Section 1.07, Penal

Code.

(b) The commission shall prescribe a form for the report required by Subsection (a).

(c) The information required to be reported under Subsection (a)(8) may not include the name or other identifying information of a county jailer or jail employee.

(d) The information reported under Subsection (a) is public information subject to an open records request under Chapter 552.

Sec. 511.021. INDEPENDENT INVESTIGATION OF DEATH OCCURRING IN COUNTY JAIL. (a) On the death of a prisoner in a county jail, the commission shall appoint a law enforcement agency, other than the local law enforcement agency that operates the county jail, to investigate the death as soon as possible.

(b) The commission shall adopt any rules necessary relating to the appointment of a law enforcement agency under Subsection

(a), including rules relating to cooperation between law enforcement agencies and to procedures for handling evidence.

SECTION 3.08. The changes in law made by this article to Article 17.032, Code of Criminal Procedure, apply only to a personal bond that is executed on or after the effective date of this Act. A personal bond executed before the effective date of executed, and the former law is continued in effect for that purpose.

SECTION 3.09. Not later than January 1, 2018, the Commission on Jail Standards shall:

(1) adopt the rules and procedures required by Section 511.009(d), Government Code, as added by this article, and the rules required by Section 511.021(b), Government Code, as added by this article; and

(2) prescribe the form required by Section 511.020(b), Government Code, as added by this article.

SECTION 3.10. Not later than September 1, 2018, the Commission on Jail Standards shall adopt the rules and procedures required by Section 511.009(a)(23), Government Code, as added by this article. On and after September 1, 2020, a county jail shall comply with any rule or procedure adopted by the Commission on Jail Standards under that subdivision.

SECTION 3.11. To the extent of any conflict, this Act prevails over another Act of the 85th Legislature, Regular Session, 2017, relating to non-substantive additions to and corrections in enacted codes.

ARTICLE 4. PEACE OFFICER AND COUNTY JAILER TRAINING

SECTION 4.01. Chapter 511, Government Code, is amended by adding Section 511.00905 to read as follows:

Sec. 511.00905. JAIL ADMINISTRATOR POSITION; EXAMINATION REQUIRED. (a) The Texas Commission on Law Enforcement shall develop and the commission shall approve an examination for a person assigned to the jail administrator position overseeing a county jail.

(b) The commission shall adopt rules requiring a person, other than a sheriff, assigned to the jail administrator position overseeing a county jail to pass the examination not later than the 180th day after the date the person is assigned to that position. The rules must provide that a person who fails the examination may be immediately removed from the position and may not

be reinstated until the person passes the examination.

(c) The sheriff of a county shall perform the duties of the jail administrator position at any time there is not a person available who satisfies the examination requirements of this section.

(d) A person other than a sheriff may not serve in the jail administrator position of a county jail unless the person satisfies the examination requirement of this section.

SECTION 4.02. Section 1701.253, Occupations Code, is amended by amending Subsection (j) and adding Subsection (n) to read as follows: commission shall require an officer to complete a 40-hour statewide education and training program on de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments. An officer shall complete the program not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier. An officer may not satisfy the requirements of this subsection [section] or Section 1701.402(g) by taking an online course on de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments.

(n) As part of the minimum curriculum requirements, the commission shall require an officer to complete a statewide education and training program on de-escalation techniques to facilitate interaction with members of the public, including techniques for limiting the use of force resulting in bodily injury.

SECTION 4.03. Section 1701.310(a), Occupations Code, is amended to read as follows:

(a) Except as provided by Subsection (e), a person may not be appointed as a county jailer, except on a temporary basis, unless the person has satisfactorily completed a preparatory training program, as required by the commission, in the operation of a county jail at a school operated or licensed by the commission. The training program must consist of at least eight hours of mental health training approved by the commission and the Commission on Jail Standards.

SECTION 4.04. Section 1701.352(b), Occupations Code, is amended to read as follows:

(b) The commission shall require a state, county, special district, or municipal agency that appoints or employs peace officers to provide each peace officer with a training program at least once every 48 months that is approved by the commission and consists of:

(1) topics selected by the agency; and

(2) for an officer holding only a basic proficiency certificate, not more than 20 hours of education and training that contain curricula incorporating the learning objectives developed by the commission regarding:

(A) civil rights, racial sensitivity, and cultural diversity;

(B) de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments; [and]

(C) de-escalation techniques to facilitate interaction with members of the public, including techniques for limiting the use of force resulting in bodily injury; and

(D) unless determined by the agency head to be inconsistent with the officer's assigned duties:

(i) the recognition and documentation of cases that involve child abuse or neglect, family violence, and sexual assault; and

(ii) issues concerning sex offender characteristics.

SECTION 4.05. Section 1701.402, Occupations Code, is amended by adding Subsection (n) to read as follows:

(n) As a requirement for an intermediate proficiency certificate or an advanced proficiency certificate, an officer must complete the education and training program regarding de-escalation techniques to facilitate interaction with members of the public established by the commission under Section 1701.253(n).

SECTION 4.06. Not later than March 1, 2018, the Texas Commission on Law Enforcement shall develop and the Commission on Jail Standards shall approve the examination required by Section 511.00905, Government Code, as added by this article.

SECTION 4.07. (a) Not later than March 1, 2018, the Texas Commission on Law Enforcement shall establish or modify training programs as necessary to comply with Section 1701.253, Occupations Code, as amended by this article.

(b) The minimum curriculum requirements under Section 1701.253(j), Occupations Code, as amended by this article, apply only to a peace officer who first begins to satisfy those requirements on or after April 1, 2018.

SECTION 4.08. (a) Section 1701.310, Occupations Code, as amended by this article, takes effect January 1, 2018.

(b) A person in the position of county jailer on September 1, 2017, must comply with Section 1701.310(a), Occupations Code, as amended by this article, not later than August 31, 2021.

ARTICLE 5. MOTOR VEHICLE STOPS, RACIAL PROFILING, AND ISSUANCE OF CITATIONS

SECTION 5.01. Article 2.132, Code of Criminal Procedure, is amended by amending Subsections (b) and (d) and adding Subsection (h) to read as follows:

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

(1) clearly define acts constituting racial profiling;

(2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;

(3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;

(4) provide public education relating to the agency's compliment and complaint process, including providing the telephone number, mailing address, and e-mail address to make a compliment or complaint with respect to each ticket, citation, or warning issued by a peace officer;

(5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of

the agency's policy adopted under this article;

(6) require collection of information relating to motor vehicle stops in which a ticket, citation, or warning is issued and to arrests made as a result of those stops, including information relating to:

(A) the race or ethnicity of the individual detained;

(B) whether a search was conducted and, if so, whether the individual detained consented to the search; [and]

(C) whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual;

(D) whether the peace officer used physical force that resulted in bodily injury, as that term is defined by Section 1.07, Penal Code, during the stop;

(E) the location of the stop; and

(F) the reason for the stop; and

(7) require the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit an annual report of the information collected under Subdivision (6) to:

(A) the Texas Commission on Law Enforcement; and

(B) the governing body of each county or municipality served by the agency, if the agency is an agency of a county, municipality, or other political subdivision of the state.

(d) On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make motor vehicle stops and transmitter-activated equipment in each agency law enforcement motorcycle regularly used to make motor vehicle stops. The agency also shall examine the feasibility of equipping each peace officer who regularly detains or stops motor vehicles with a body worn camera, as that term is defined by Section 1701.651, Occupations Code. If a law enforcement agency installs video or audio equipment or equips peace officers with body worn cameras as provided by this subsection, the policy adopted by the agency under Subsection (b) must include standards for reviewing video and audio documentation.

(h) A law enforcement agency shall review the data collected under Subsection (b)(6) to identify any improvements the agency could make in its practices and policies regarding motor vehicle stops.

SECTION 5.02. Article 2.133, Code of Criminal Procedure, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance shall report to the law enforcement agency that employs the officer information relating to the stop, including:

(1) a physical description of any person operating the motor vehicle who is detained as a result of the stop, including:

(A) the person's gender; and

(B) the person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability;

(2) the initial reason for the stop;

(3) whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;

(4) whether any contraband or other evidence was discovered in the course of the search and a description of the contraband or evidence;

(5) the reason for the search, including whether:

(A) any contraband or other evidence was in plain view;

(B) any probable cause or reasonable suspicion existed to perform the search; or

(C) the search was performed as a result of the towing of the motor vehicle or the arrest of any person in the motor vehicle;

(6) whether the officer made an arrest as a result of the stop or the search, including a statement of whether the arrest was based on a violation of the Penal Code, a violation of a traffic law or ordinance, or an outstanding warrant and a statement of the offense charged;

(7) the street address or approximate location of the stop; [and]

(8) whether the officer issued a verbal or written warning or a ticket or citation as a result of the stop; and

(9) whether the officer used physical force that resulted in bodily injury, as that term is defined by Section 1.07, Penal Code, during the stop.

(c) The chief administrator of a law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, is responsible for auditing reports under Subsection (b)

to ensure that the race or ethnicity of the person operating the motor vehicle is being reported.

SECTION 5.03. Article 2.134(c), Code of Criminal Procedure, is amended to read as follows:

(c) A report required under Subsection (b) must be submitted by the chief administrator of the law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, and must include:

(1) a comparative analysis of the information compiled under Article 2.133 to:

(A) evaluate and compare the number of motor vehicle stops, within the applicable jurisdiction, of persons who are recognized as racial or ethnic minorities and persons who are not recognized as racial or ethnic minorities; [and]

(B) examine the disposition of motor vehicle stops made by officers employed by the agency, categorized according to the race or ethnicity of the affected persons, as appropriate, including any searches resulting from stops within the applicable jurisdiction; and

(C) evaluate and compare the number of searches resulting from motor vehicle stops within the applicable jurisdiction and whether contraband or other evidence was discovered in the course of those searches; and

(2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

SECTION 5.04. Article 2.137, Code of Criminal Procedure, is amended to read as follows:

Art. 2.137. PROVISION OF FUNDING OR EQUIPMENT. (a) The Department of Public Safety shall adopt rules for providing funds or video and audio equipment to law enforcement agencies for the purpose of installing video and audio equipment in law enforcement motor vehicles and

motorcycles or equipping peace officers with body worn cameras [as described by Article 2.135(a)(1)(A)], including specifying criteria to prioritize funding or equipment provided to law enforcement agencies. The criteria may include consideration of tax effort, financial hardship, available revenue, and budget surpluses. The criteria must give priority to:

(1) law enforcement agencies that employ peace officers whose primary duty is traffic enforcement;

(2) smaller jurisdictions; and

(3) municipal and county law enforcement agencies.

(b) The Department of Public Safety shall collaborate with an institution of higher education to identify law enforcement agencies that need funds or video and audio equipment for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras [as described by Article 2.135(a)(1)(A)]. The collaboration may include the use of a survey to assist in developing criteria to prioritize funding or equipment provided to law enforcement agencies.

(c) To receive funds or video and audio equipment from the state for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras [as described by Article 2.135(a)(1)(A)], the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency needs funds or video and audio equipment for that purpose.

(d) On receipt of funds or video and audio equipment from the state for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras [as described by Article 2.135(a)(1)(A)], the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency has taken the necessary actions to use and is using [installed] video and audio equipment and body worn cameras for those purposes [as described by Article 2.135(a)(1)(A) and is using the equipment as required by Article 2.135(a)(1)].

SECTION 5.05. Article 2.1385(a), Code of Criminal Procedure, is amended to read as follows:

(a) If the chief administrator of a local law enforcement agency intentionally fails to submit the incident-based data as required by Article 2.134, the agency is liable to the state for a civil penalty in an [the] amount not to exceed \$5,000 [of \$1,000] for each violation. The attorney general may sue to collect a civil penalty under this subsection.

SECTION 5.06. Article 2.135, Code of Criminal Procedure, is repealed.

SECTION 5.07. Articles 2.132 and 2.134, Code of Criminal Procedure, as amended by this article, apply only to a report covering a calendar year beginning on or after January 1, 2018.

SECTION 5.08. Not later than September 1, 2018, the Texas Commission on Law Enforcement shall:

(1) evaluate and change the guidelines for compiling and reporting information required under Article 2.134, Code of Criminal Procedure, as amended by this article, to enable the

guidelines to better withstand academic scrutiny; and

(2) make accessible online:

(A) a downloadable format of any information submitted under Article 2.134(b), Code of Criminal Procedure, that is not exempt from public disclosure under Chapter 552, Government Code; and

(B) a glossary of terms relating to the information to make the information readily understandable to the public. This Act takes effect September 1, 2017.

Senate Speaker of the House

I hereby certify that S.B. No. 1849 passed the Senate on May 11, 2017, by the following vote:
Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1849 passed the House on May 20, 2017, by the following vote:
Yeas 137, Nays 0, one present not voting.

ARTICLE 6. EFFECTIVE DATE

SECTION 6.01. Except as otherwise provided by this Act,

Approved:

Date

Governor

Chief Clerk of the House

**ADDISON POLICE DEPARTMENT
RACIAL PROFILING POLICY**

167.00 BIASED-BASED POLICING (TBBP: 2.01.1)

The purpose of this order is to reaffirm the Town of Addison Police Department's commitment to unbiased policing in all its encounters with any person; to reinforce procedures that serve to ensure public confidence and mutual trust through the provision of services in a fair and equitable fashion; and to protect our officers from unwarranted accusations of misconduct when they act within the dictates of departmental policy and the law.

This policy is for internal use only and does not enhance an officer's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this General Order, if proven, can only form the basis of a complaint by this Department and only in a non-judicial, administrative setting.

167.01 Policy

It is the policy of this department to police in a proactive manner and to aggressively investigate suspected violations of the law. Officers shall actively enforce local, state and federal laws in a responsible and professional manner, without regard to race, ethnicity or national origin. Officers are strictly prohibited from engaging in racial profiling as defined in this policy. Racial profiling is an unacceptable police tactic and will not be condoned.

This policy is adopted in compliance with the applicable requirements of the Texas Code of Criminal Procedure, which prohibits Texas peace officers from engaging in racial profiling.

167.02 Definitions

a. Racial Profiling -a law enforcement-initiated action based on an individual's race, ethnicity, or national origin, rather than on behavior or information identifying the individual as having engaged in criminal activity. Racial profiling pertains to persons who are viewed as suspects or potential suspects of criminal behavior. The term is not relevant as it pertains to witnesses, complainants, persons needing assistance, or other citizen contacts.

b. Race or Ethnicity -persons of a particular descent, including White, Black, Hispanic/Latino, Asian/Pacific Islander, Middle Eastern, and Alaska Native/American Indian.

c. Acts Constituting Racial Profiling- acts initiating law enforcement action, such as a traffic stop, a detention, a search, issuance of a citation, or an arrest based solely upon an individual's race, ethnicity, or national origin or on the basis of racial or ethnic stereotypes, rather than upon the individual's behavior, information identifying

the individual as having possibly engaged in criminal activity, or other lawful reasons for the law enforcement action.

d. Motor Vehicle Contact -means an occasion in which a peace officer stops a motor vehicle for an alleged violation of law or ordinance.

167.03 Prohibition

- a. Officers of the Addison Police Department are strictly prohibited from engaging in racial profiling. The prohibition against racial profiling does not preclude the use of race, ethnicity or national origin as factors in a detention decision by an officer. Race, ethnicity or national origin may be legitimate factors in such a decision when used as part of a description of a suspect or witness for whom an officer is searching.
- b. Officers of the Addison Police Department shall not engage in profiling based solely on gender, sexual orientation, religion, economic status, age, culture, or any other identifiable group.

167.04 Complaint Process

- a. No person shall be discouraged, intimidated or coerced from filing a complaint, or be discriminated against because they have filed a complaint.
- b. Any person who believes that a peace officer employed by the Addison Police Department has engaged in racial profiling with respect to that person, may file a complaint in accordance with the provisions of the Standard Operating Procedure (Professional Standards).
 1. An employee who is contacted regarding a complaint against an officer shall follow the procedures set forth in the Standard Operating Procedure (Professional Standards).
 2. Citizens who appear in person wishing to file a complaint shall be provided with a departmental brochure, "How to File a Compliment or Complaint." Brochures are maintained in the Addison Police Department lobby, and at Addison Town Hall.
- c. Any supervisor who becomes aware of an alleged or suspected violation of this policy shall report the alleged violation in accordance with the Standard Operating Procedure (Professional Standards).
- d. All complaints of racial profiling shall be investigated as thoroughly as possible. Final disposition and/or assignment of the investigation will be approved the Chief of Police (or designee). A log of all Racial Profiling Complaints will be maintained by Police Administration.

167.05 Compliment Process

Any person wishing to compliment an officer, is encouraged to do so by calling the main police department phone number, sending an email to the Police Administration email address listed on the Racial Profiling brochures, or appearing in person at the Addison Police Department.

167.06 Disciplinary and Corrective Actions

Any officer of this Department who is found, after investigation, to have engaged in racial profiling in violation of this policy may be subject to disciplinary action, up to and including termination. Disciplinary

or corrective actions may include diversity, sensitivity or other appropriate training or counseling, as determined by the Chief of Police.

167.07 Public Education

a. This Department shall provide education to the public concerning the racial profiling compliment and complaint process. The primary method of public education shall be through a brochure, "How to File a Compliment or Complaint" which are maintained in the lobby of the Addison Police Department, and at the Addison Town Hall. Other education methods may be utilized to inform the public, including news media, civic presentations, the Internet, and/or public meetings.

b. The Department will also include on every written warning, ticket, and citation, the following: "For information on how to file a compliment or complaint related to racial profiling, please visit www.addisontexas.net".

167.08 Collection of Information and Annual Report

a. For each motor vehicle contact related to an alleged violation of law or ordinance, for each motor vehicle contact in which a ticket, citation, or warning is issued, and/or for each arrest resulting from a motor vehicle contact, an officer involved in the stop shall collect the following information:

1. Information identifying the race or ethnicity of the person detained. The following codes will be used to identify the individual's race:

- i. White
- ii. Black
- iii. Hispanic or Latino
- iv. Asian or Pacific Islander
- v. Alaska Native or American Indian
- vi. Middle Eastern
- vii. Other

**Officers may not ask the individual to identify their race. If the officer is unable to determine the race or ethnicity of the person contacted, then the race shall be entered as "Other".

2. Whether the officer knew the race or ethnicity of the individual detained before detaining that individual;

3. Initial reason for stop;

- i. Violation of the law (other than Traffic)
- ii. Pre-existing knowledge (i.e. Warrants)

iii. Moving Traffic Violation

iv. Vehicle Traffic Violation (equipment, inspection, etc.)

4. If a search was conducted as a result of the stop?

i. If so, did the detained person consent to the search?

5. Was contraband or other evidence discovered as a result of the search?

6. Description of contraband or evidence discovered:

i. Illegal drugs / drug paraphernalia

ii. Currency

iii. Weapons

iv. Alcohol

v. Stolen Property

vi. Other

7. Reason for the search:

i. Consent

ii. Contraband/evidence in plain sight

iii. Probable cause or reasonable suspicion

iv. Inventory as a result of vehicle towing

v. Incident to Arrest/Warrant

8. Information on Arrests:

i. Did the officer make an arrest as a result of the stop or search?

ii. Reasons for arrest:

1) Violation of Penal Code

2) Violation of Traffic Law

3) Violation of City Ordinance

4) Outstanding Warrant

9. Street Address or Approximate Location of Stop

i. City street

ii. US Highway

iii. County Road

iv. Private Property or Other

****Officers shall use the final stop location when collecting this data****

10. Was a verbal/written warning or ticket/citation issued as a result of the stop?

11. Whether the officer used physical force that resulted in bodily injury (as defined by Sec. 1.07, Penal Code, meaning “physical pain, illness, or any impairment of physical condition), during the stop?

i. Location of the stop

ii. Reason for the stop

b. The information collected shall be entered in to a database by entering Racial Profiling data utilizing the in-car Mobile Data Computer (MDC), electronic ticket-writers, or the computers available in the Department. All contacts requiring Racial Profiling data collection must be entered. In the event the data is unable to be collected electronically, the data will be recorded on temporary forms and entered in the database at a later date.

c. The Support Operations Division Commander shall ensure all Racial Profiling Data is collected and reported to the Chief of Police. The data collected shall be compiled in an annual report covering the period January 1 through December 31 of each year, and shall be submitted to the governing body of the Town of Addison no later than March 1 of the following year. The report will include:

1. A comparative analysis of the information compiled (under Article 2.133):

i. Evaluate and compare the number of motor vehicle stops, within

the applicable jurisdiction, of persons who are recognized as racial or ethnic minorities and persons who are not recognized as racial or ethnic minorities;

ii. Examine the disposition of motor vehicle stops made by officers employed by the agency, categorized according to the race or ethnicity of the affected persons, as appropriate, including any searches resulting from stops within the applicable jurisdiction;

iii. Evaluate and compare the number of searches resulting from motor vehicle stops within the applicable jurisdiction and whether contraband or other evidence was discovered in the course of those searches (SEARCH ANALYSIS).

2. Information related to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

3. Public education efforts concerning the racial profiling complaint process.

****Contacts are defined as motor vehicle stops related to an alleged violation of law or ordinance, OR motor vehicle stops that resulted in a ticket, citation, warning or arrest.**

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

e. Racial Profiling Data will also be reported to the Texas Commission on Law Enforcement (TCOLE) by March 1 of each year, following the Commission's prescribed format.

167.09 Audio and Video Equipment

- a. Each motor vehicle regularly used by this department to make motor vehicle contacts shall be equipped with a mobile video camera system capable of recording video and audio.
- b. Every peace officer employed by the Town of Addison will be issued, or have available for use, a body-mounted camera capable of recording video and audio.
- c. Each motor vehicle contact made by an officer of this department capable of being recorded by video and audio, shall be recorded.
- d. Supervisors and Officers shall ensure that mobile video camera equipment, and/or audio equipment, is properly functioning prior to commencing their tour of duty. Police units with malfunctioning or inoperable mobile video camera equipment shall not be utilized under normal circumstances.
- e. Supervisors shall have the authority to assign patrol units with malfunctioning or inoperable mobile video equipment when situations dictate. Officers assigned to such units are required to have a properly functioning body-mounted camera capable of video and audio recording.

167.10 Review of Video and Audio Documentation

- a. Each audio and video recording shall be retained for a minimum period of ninety (90) days, unless a complaint is filed alleging that an officer has engaged in racial profiling with respect to a motor vehicle contact. The Commander of the Field Operations Bureau shall ensure that all audio and recordings are properly stored and retained in accordance with applicable laws and this policy.
- b. If a complaint is received alleging that an officer has engaged in racial profiling, the audio/video recording shall be forwarded to Police Administration, along with the complaint documentation. The Administration shall retain the video until final disposition of the complaint has been made.
- c. Supervisors shall review a randomly selected sampling of five (5) video and audio recordings, made recently by officers under their direct supervision and employed by the Department, in order to determine if patterns of racial profiling exist. These reviews shall be conducted quarterly and documented on the appropriate Quarterly Inspection Form. Written documentation shall include:
 - 1. The names of the officers whose contacts were reviewed;
 - 2. The date(s) of the videos reviewed;
 - 3. The date the actual review was conducted; and
 - 4. The name of the person conducting the review.
- d. The Field Operations Division Commander shall forward the required documentation to Police Administration.

e. Police Administration shall maintain a file of all video review documentation performed, in compliance with this policy.

f. In reviewing audio and video recordings, the supervisor shall seek to determine if the officer(s) reviewed have engaged in a pattern of racial profiling, this includes multiple acts constituting racial profiling for which there is no reasonable, credible explanation based on established police and law enforcement procedures.

167.11 Training

a. Each peace officer employed by the department shall complete the comprehensive education and training program on racial profiling established by the Texas Commission on Law Enforcement (TCOLE) not later than the second anniversary of the date the officer's license was issued or carried by the Addison Police Department.

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

Contact Information

For additional questions regarding the information presented in this report, please contact:

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Council Meeting

5.

Meeting Date: 03/09/2021

Department: City Secretary

AGENDA CAPTION:

Present, Discuss, and Consider Action on an **Ordinance Declaring Unopposed the Mayoral Candidate in the May 1, 2021 Mayoral General Election, Elected to Office; Canceling the Election for the Office of Mayor; and Providing an Effective Date.**

BACKGROUND:

On March 4, 2021 the City Secretary submitted to the City Council a Certification of Unopposed Mayoral Candidate certifying that no person has made a declaration of write-in candidacy for the May 1, 2021 General Municipal Election, and that the following candidate is unopposed:

Joe Chow

Upon receiving the certification, the City Council may declare the unopposed candidate elected to office. A copy of this ordinance and certification must be sent to Dallas County Elections Department for posting at each polling place used during this election. The ballots used in this election, must include: the name of the candidate that has been declared elected under the heading "Unopposed Candidate Declared Elected" and listed in a way that prevents voters from casting votes in connection with the Mayoral Election.

The statute provides that a certificate of election is issued to each candidate who is declared elected, in the same manner and at the same time as provided for a candidate elected at the election. Candidates elected through cancellation must also qualify for office and take the oaths of office, the same as candidates elected at an election.

RECOMMENDATION:

Administration recommends approval.

Attachments

Ordinance - Cancelling Mayoral Election

ORDINANCE NO. O21-__

AN ORDINANCE OF THE TOWN OF ADDISON DECLARING UNOPPOSED MAYORAL CANDIDATE IN THE MAY 1, 2021 MAYORAL GENERAL ELECTION, ELECTED TO OFFICE; CANCELING THE ELECTION FOR THE OFFICE OF MAYOR; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the General City Election was called for Saturday, May 1, 2021 for the purpose of electing a mayor and three members to the City Council; and

WHEREAS, the City Secretary has submitted a Certification of Unopposed Candidates, **Exhibit A**, advising that no person has made a declaration of write-in candidacy for the mayoral election and therefore that the mayoral candidate on the ballot is unopposed for election to office; and

WHEREAS, under these circumstances, Subchapter C, chapter 2, Election Code, authorizes the City Council to declare the candidate elected to office and cancel the election for the office of mayor.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

SECTION 1. The following candidate, who is unopposed in the mayoral election of the Saturday, May 1, 2021 General City Election for the office of mayor, is declared elected to office, and shall be issued a certificate of election following the time the election would have been canvassed:

Joe Chow

SECTION 2. The May 1, 2021 Mayoral Election is canceled, and the city secretary is directed to submit a copy of this ordinance to the Dallas County Elections Department for posting at each polling place used or that would have been used in the election.

SECTION 3. It is declared to be the intent of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this ordinance is declared invalid by the judgment or decree of a court of competent jurisdiction, the invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this ordinance since the City Council would have enacted them without the invalid portion.

SECTION 4. This ordinance shall take effect upon its final passage, and it is so ordained.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON,
TEXAS, on this the 9th day of MARCH 2021.**

TOWN OF ADDISON, TEXAS

Joe Chow, Mayor

ATTEST:

APPROVED AS TO FORM:

Irma G. Parker, City Secretary

Brenda N. McDonald, City Attorney

EXHIBIT A



**CERTIFICATION OF UNOPPOSED CANDIDATES
BY THE CITY SECRETARY**

I, Irma G. Parker, certify that I am the City Secretary of the Town of Addison and the authority responsible for preparing the ballot for the Saturday, May 1, 2021 General Municipal Election. I further certify that no person has made a declaration of write-in candidacy, and the following mayoral candidate is unopposed in said election:

Joe Chow

Dated this 2nd day of MARCH 2021.

TOWN OF ADDISON, TEXAS

Irma G. Parker

Irma G. Parker, City Secretary

**CITY
SECRETARY**

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IT ALL COMES
TOGETHER.