

ORDINANCE No.

113610

COUNCIL BILL No.

106325

The City of

AN ORDINANCE relating to discrimination in places of public accomodation and remedies therefor, amending Seattle Municipal Code (SMC Sections 14.08.010, 14.08.020, 14.08.030, 14.08.040, 14.08.090 and 14.08.190.

Honorable President:

Your Committee on

to which was referred the within Cou report that we have considered the an

COMPTROLLER FILE No.

Introduced: AUG 24 1987	By: NOLAND
Referred: AUG 24 1987	To: HOUSING & HUMAN SERVICES
Referred:	To:
Referred:	To:
Reported: SEP 8 1987	Second Reading: SEP 8 1987
Third Reading: SEP 8 1987	Signed: SEP 8 1987
Presented to Mayor: SEP 9 1987	Approved: SEP 18 1987
Returned City: SEP 6 1987	Published:
Vetoed by Mayor:	Veto Published:
Passed over Veto:	Veto Sustained:

HHS 9-1
DO PASS, as ame

The City of Seattle--Legislative Department

REPORT OF COMMITTEE

Date Reported
and Adopted

President:

Committee on

was referred the within Council Bill No.

we have considered the same and respectfully recommend that the same:

1/45 9-1-87
PASS, as amended 5-0

VOTE 8-0

Jane Maud

Committee Chair

RG:ndc
09/01/87
7:ORD1.1

ORDINANCE 113610

AN ORDINANCE relating to discrimination in places of public accommodation and remedies therefor, amending Seattle Municipal Code (SMC) Chapter 14.08 (Open Housing Ordinance 104839 as last amended by Ordinance 113144) by amending SMC Sections 14.08.010, 14.08.020, 14.08.030, 14.08.040, 14.08.090, and 14.08.190.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Subsection A of Section 14.08.010 of the Seattle Municipal Code (Ordinance 104839 § 1(A) is amended as follows:

A. This chapter shall be known as and may be cited as the "Open Housing and Public Accommodations Ordinance." The general purposes of this chapter are to promote the availability and accessibility of housing and real property to all persons; to prohibit discriminatory practices in real property transactions, whether direct or indirect, which inexcusably and unjustifiably deny those persons equal rights and opportunities in acquiring or disposing of real property; to assure all persons equal opportunity to the full enjoyment of places of public accommodation; to eliminate and to prevent unlawful discrimination in places of public accommodation; ((and)) to provide enforcement mechanisms for the accomplishment of such purposes; and to these ends the provisions of this chapter shall be liberally construed. The role of the Human Rights Department is to enforce the provisions of this chapter in furtherance of this policy.

1 Section 2. Section 14.08.020 of the Seattle Municipal
2 Code (Ordinance 104839 § 2) is amended as follows:

3 14.08.020 Definitions.

4 Definitions as used in this chapter, unless additional
5 meaning clearly appears from the context, shall have the
6 meanings subscribed:

7 A. "Charging party" means ~~((any person alleging an
8 unfair housing practice under this chapter.))~~ the person
9 aggrieved by an unfair practice, or the person making a charge
10 on another person's behalf, or the Director when the Director
11 files a charge.

12 B. "City" means The City of Seattle.

13 C. "City Department" means any agency, office, board or
14 commission of the City, or any department employee acting on
15 its behalf, but shall not mean a public corporation chartered
16 under Ordinance 103387, or its successor ordinances, or any
17 contractor, consultant, or concessionaire or lessee.

18 ~~((B-))~~ D. "Commission" means the Seattle Human Rights
19 Commission. ~~((or the Seattle Women's Commission, as the con-
20 text requires.))~~

21 ~~((C-))~~ E. "Department" means the Department of Human
22 Rights of the City.

23 ~~((D-))~~ F. "Director" means the Director of Human Rights.
24 ~~((or the Director of the Office of Women's Rights, as the con-
25 text requires.))~~

26 ~~((E-))~~ G. Discriminate means any conduct, whether by
27 single act or as part of a practice, the effect of which is to
28 adversely affect or differentiate between or among individuals
or groups of individuals, because of race, color, creed, reli-

1 gion, ancestry, national origin, age, sex, marital status,
2 parental status, sexual orientation, political ideology, or
3 the presence of any sensory, mental or physical handicap or
4 the use of a trained guide or service dog by a (~~blind or~~
~~deaf~~) handicapped person.

5 ((F-)) H. "Dwelling" includes any building containing one
6 (1) or more dwelling units.

7 ((G-)) I. "Dwelling unit" includes a suite of rooms for
8 occupancy by one (1) family containing space for living,
9 sleeping and preparation of food, and containing toilet and
10 bathing facilities.

11 J. "Full enjoyment of" includes the right to purchase any
12 service, commodity, or article of personal property offered or
13 sold on, or by, any establishment to the public, and the
14 admission of any person to accommodations, advantages, facili-
15 ties, or privileges of any place of public resort, accom-
16 modation, assemblage, or amusement, without acts directly or
17 indirectly causing persons of any particular race, color,
18 sex, marital status, parental status, sexual orientation,
19 political ideology, creed, religion, national origin,
20 ancestry, or any sensory, mental or physical handicap, or a
handicapped person using a trained guide or service dog, to be
treated as not welcome, accepted, desired or solicited.

21 ((H-)) K. "Housing accommodations" includes any dwelling
22 or dwelling unit, rooming unit, rooming house, lot or parcel
23 of land in the City which is used, intended to be used, or
24 arranged or designed to be used as, or improved with, a resi-
25 dential structure for one (1) or more human beings.

26 ((I-)) L. "Lender" includes any bank, insurance company,
27 savings or building and loan association, credit union, trust
28 company, mortgage company, or other person or agent thereof,

1 engaged wholly or partly in the business of lending money for
2 the financing or acquisition, construction, repair or main-
3 tenance of real property.

4 ((J-)) M. "Marital status" means the presence or absence
5 of a marital relationship and includes the status of married,
6 separated, divorced, engaged, widowed, single or cohabitating.

7 ((K-)) N. "Occupant" includes any person who has
8 established residence or has the right to occupancy of real
9 property.

10 ((L-)) O. "Owner" includes persons who own, lease,
11 sublease, rent, operate, manage, have charge of, control or
12 have the right of ownership, possession, management, charge,
13 or control of real property on their own behalf or on behalf
14 of another.

15 ((M-)) P. "Parental status" means being a parent, step-
16 parent, adoptive parent, guardian, foster parent or custodian
17 of a minor child or children, which child or children shall
18 permanently or temporarily occupy the real estate ((-)) or
19 shall seek full enjoyment of any place of public accommodation.

20 ((N-)) Q. "Party" includes the person charging or making
21 a complaint or upon whose behalf a complaint is made alleging
22 an unfair practice, the person alleged or found to have com-
23 mitted an unfair practice and the Department of Human Rights.

24 ((O-)) R. "Person" includes one (1) or more individuals,
25 partnerships, organizations, trade or professional asso-
26 ciations, corporations, legal representatives, trustees,
27 trustees in bankruptcy and receivers. It includes any owner,
28 lessee, proprietor, manager, agent or employee, whether one
(1) or more natural persons, and further includes any politi-

1 cal or civil subdivisions or agency or instrumentality of the
2 City.

3 S. "Place of public accommodation" includes, but is not
4 limited to, any place, licensed or unlicensed, kept for gain,
5 hire, or reward, or where charges are made for admission, ser-
6 vice, occupancy, or use of any property or facilities, whether
7 conducted for the entertainment, housing, or lodging of tran-
8 sient guests, or for the benefit, use, or accommodation of
9 those seeking health, recreation, or rest, or for the burial
10 or other disposition of human remains, or for the sale of
11 goods, merchandise, services, or personal property, or for the
12 rendering of personal services, or for public conveyance or
13 transportation on land, water, or in the air, including the
14 stations and terminals thereof and the garaging of vehicles,
15 or where food or beverages of any kind are sold for consump-
16 tion on the premises, or where public amusement, entertain-
17 ment, sports, or recreation of any kind is offered with or
18 without charge, or where medical service or care is made
19 available, or where the public gathers, congregates, or
20 assembles for amusement, recreation, or public purposes, or
21 public halls, public elevators, and public washrooms of
22 buildings and structures occupied by two or more tenants, or
23 by the owner and one or more tenants, or any public library or
24 private educational institution, or private schools of special
25 instruction, or nursery schools, or day care centers or
26 children's camps.

27 ((P-)) T. "Political ideology" means any idea or belief,
28 or coordinated body of ideas or beliefs, relating to the pur-
pose, conduct, organization, function or basis of government
and related institutions and activities, whether or not

1 characteristic of any political party or group. This term
2 includes membership in a political party or group and includes
3 conduct, reasonably related to political ideology, which does
4 not interfere with the property rights of the landowner((7))
5 as it applies to housing or which does not cause substantial
6 and material disruption of the property rights of the provider
7 of a place of public accommodation.

8 ((Q-)) U. "Prospective borrower" includes any person who
9 seeks to borrow money to finance the acquisition, construc-
10 tion, repair, or maintenance of real property.

11 ((R-)) V. "Prospective occupant" includes any person who
12 seeks to purchase, lease, sublease or rent real property.

13 ((S-)) W. "Real estate agent, salesperson or employee"
14 includes any person employed by, associated with or acting for
15 a real estate broker to perform or assist in the performance
16 of any or all of the functions of a real estate broker.

17 ((T-)) X. "Real estate broker" includes any person who
18 for a fee, commission, or other valuable consideration, lists
19 for sale, sells, purchases, exchanges, leases or subleases,
20 rents, or negotiates or offers or attempts to negotiate the
21 sale, purchase, exchange, lease, sublease or rental of real
22 property of another, or holds themselves out as engaged in the
23 business of selling, purchasing, exchanging, listing, leasing,
24 subleasing, or renting real property of another, or collects
25 the rental for use of real property of another.

26 ((U-)) Y. "Real property" includes housing accom-
27 modations, buildings, structures, real estate, lands, tene-
28 ments, leaseholds, interests in real estate cooperatives,
condominiums, and hereditaments, corporeal and incorporeal, or
any interest therein.

1 ((V-)) Z. "Respondent" means any person who is alleged
2 to have committed an unfair practice prohibited by this
3 chapter.

4 ((W-)) AA. "Rooming unit" includes one (1) or more rooms
5 within a dwelling unit or rooming house containing space for
6 living and sleeping.

7 ((X-)) BB. "Sexual orientation" means actual or per-
8 ceived male or female heterosexuality, bisexuality, homo-
9 sexuality, transsexuality, or transvestism and includes a
10 person's attitudes, preferences, beliefs and practices per-
11 taining thereto.

12 Section 3. Section 14.08.030 of the Seattle Municipal
13 Code (Ordinance 104839 § 3(1)) is amended as follows:

14 14.08.030 Unfair practices forbidden.

15 Unfair practices as defined in Sections 14.08.040 through
16 14.08.090 ((regarding real property)) are contrary to the
17 public peace, health, safety and general welfare and are pro-
18 hibited by the City in the exercise of its police power.

19 Section 4. Section 14.08.040 of the Seattle Municipal
20 Code (Ordinance 104839 § 3(2)) is amended as follows:

21 14.08.040 Unfair practices--Generally.

22 A. No owner, assignee, real estate broker, real estate
23 agent, salesperson or employee, or other person having the
24 right to sell, rent, lease, sublease, assign, transfer, or
25 otherwise dispose of real property, shall discriminate by
26 undertaking or refusing to sell, rent, lease, sublease,
27 assign, transfer or otherwise deny to or withhold from any
28 person or group of persons such real property, or segregate
the use thereof, or represent that such real property is not
available for inspection, when in fact it is so available, or

1 expel or evict an occupant from real property because of the
2 race, color, creed, religion, ancestry, national origin, age,
3 sex, marital status, sexual orientation, parental status,
4 political ideology, or the presence of any sensory, mental or
5 physical handicap or the use of a trained guide dog by a blind
6 or deaf person, or to discriminate against or segregate any
7 person because of such person's race, color, religion, ancestry,
8 national origin, age, sex, marital status, sexual orientation,
9 parental status, political ideology, or the presence of any
10 sensory, mental or physical handicap or the use of a trained
11 guide or service dog by a ((blind or deaf)) handicapped person
12 in the terms, conditions or privileges of the sale, rental,
13 lease, sublease, assignment, transfer or other disposition of
14 any such real property, including but not limited to the
15 setting of rates for rental or lease, or establishment of
16 damage deposits, or other financial conditions for rental or
17 lease, or in the furnishing of facilities or services in con-
18 nection therewith.

17 B. It is an unfair practice to unreasonably prohibit
18 modifications needed by a handicapped tenant. Whether or not
19 the landlord permits tenants in general to make alterations or
20 additions to a structure or fixtures, it is an unfair practice
21 for a landlord to refuse to allow a person to make alterations
22 or additions, which are necessary to make the rental property
23 accessible by handicapped persons, under the following
24 conditions:

24 1. The landlord is not required to pay for the altera-
25 tions, additions, or restoration.

26 2. The landlord may reserve the right to approve the
27 design, quality, and construction of the alterations or addi-
28

1 tions in order to minimize damage to the building and enforce
2 standards of quality and architectural compatability.

3 C. It is an unfair practice for any person or his or her
4 agent or employee to commit an act which directly or
5 indirectly requires any person to pay a larger sum than the
6 uniform rates charged other persons, or to refuse or withhold
7 from any person the admission, patronage, custom, presence,
8 frequenting, dwelling, staying, or lodging in any place of
9 public accommodation, or to deny, directly or indirectly, any
10 person the full enjoyment of any of the goods, services,
11 accommodations, facilities, privileges or advantages in any
12 place of public accommodation because of the person's race,
13 color, religion, ancestry, sex, marital status, parental sta-
14 tus, sexual orientation, political ideology, creed, national
15 origin, sensory, mental or physical handicap, or the use of a
16 trained guide or service dog by a handicapped person except
17 for conditions and limitations established by law and appli-
18 cable to all persons regardless of race, color, religion,
19 ancestry, sex, marital status, parental status, sexual orien-
20 tation, political ideology, creed, national origin, sensory,
21 mental or physical handicap, or the use of a trained guide or
22 service dog by a handicapped person.

23 D. It is an unfair practice for any person, agent or
24 employee to print, circulate, post, mail or otherwise cause
25 directly or indirectly to be published a statement, adver-
26 tisement, or sign which indicates directly or indirectly that
27 the full enjoyment of the goods, services, facilities, privi-
28 leges, advantages, and accommodations of a place of public
accommodation will be refused, withheld from, denied or in

1 some manner limited or restricted toward an individual; or
2 that an individual's patronage of or presence at a place of
3 public accommodation is objectionable, unwelcome, unacceptable
4 or undesirable because of a person's race, color, religion,
5 creed, ancestry, national origin, sex, marital status,
6 parental status, sexual orientation, sensory, mental or phy-
7 sical handicap or political ideology, or handicapped person's
8 use of a trained guide or service dog.

9 Section 5. Section 14.08.090 of the Seattle Municipal
10 Code (Ordinance 104839 § 3(7)) is amended as follows:

11 14.08.090 Denial of right granted under this
12 chapter--Prohibited.

13 No person, whether or not acting for profit, shall harass,
14 intimidate, or otherwise abuse or discriminate against any
15 person or person's friends or associates because of the race,
16 color, religion, ancestry, national origin, age, sex, marital
17 status, sexual orientation, parental status, political
18 ideology or the presence of any sensory, mental or physical
19 handicap, or the use of a trained guide or service dog by a
20 ((blind or deaf)) handicapped person with the purpose or
21 effect of denying to such person or persons the rights granted
22 in this chapter or the right to quiet or peaceful possession
23 or enjoyment of any real property or the full enjoyment of any
24 place of public accommodation.

25 Section 6. Subsection C of Section 14.08.180 of the
26 Seattle Municipal Code (Ordinance 104839 § 10(c)) is amended
27 as follows:

28 C. In the event the Hearing Examiner (or a majority of
the panel composed of the Examiner and Commissioners), deter-
mines that a respondent has committed an unfair ((housing))
practice under this chapter, the Hearing Examiner (or panel

1 majority) may order the respondent to take such affirmative
2 action or provide for such relief as is deemed necessary to
3 correct the practice, effectuate the purpose of this chapter,
4 and secure compliance therewith, including but not limited to,
5 rent refund, or credit, reinstatement to tenancy, affirmative
6 recruiting and advertising measures, attorney's fees, or to
7 take such other action as in the judgment of the Hearing
8 Examiner (or panel majority) will effectuate the purposes of
9 this chapter, including action which could be ordered by a
10 court, except that damages for humiliation and mental suf-
11 fering shall not exceed One Thousand Dollars (\$1,000.00).
12 Further, up to One Thousand Dollars (\$1,000.00) may be awarded
13 for loss of the right to be free from discrimination in real
14 estate transactions(~~(-)~~) or the right to full enjoyment of any
15 place of public accommodation. An order may include the
16 requirement for report on the matter of compliance.

17 Section 7. Section 14.08.190 of the Seattle Municipal
18 Code (Ordinance 104839 § 11) is amended, adding new subsec-
19 tions K, L, and M as follows:

20 K. As it pertains to places of public accommodations:
21 be construed to include or apply to any institute, bona fide
22 club or place of accommodation which is by its nature
23 distinctly private, though where public use is permitted that
24 use shall be covered by this chapter; nor be construed to
25 apply to any noncommercial facility operated or maintained by
26 a bona fide religious institution;

27 L. As it pertains to places of public accommodation, be
28 construed to require structural changes, modifications, or
additions to make any place accessible to a handicapped person
except as otherwise required by law;

1 M. Be construed to prohibit any person from denying
2 another person the full enjoyment of a place of public accom-
3 modation because of actions by the person seeking full enjoy-
4 ment of the place of public accommodation that constitute a
5 risk to property or to other persons.

6 Section 8. Severability: If any section, subsection,
7 subdivision, paragraph, sentence, clause, or phrase of this
8 chapter, or application thereof to any person or circumstance
9 is held invalid by any court of competent jurisdiction, such
10 decision shall not affect the validity, applicability, or
11 effectiveness of the remaining portions of this chapter, and
12 to this end the provisions of this chapter are declared to be
13 severable.

14 Section 9. This ordinance shall take effect and be in
15 force thirty days from and after its passage and approval, if
16 approved by the Mayor; otherwise it shall take effect at the
17 time it shall become a law under the provisions of city
18 charter.

19 Passed by the City Council the 8th day of September,
20 1982, and signed by me in open session in authentication of
21 its passage this 8th day of September, 1982,
22 _____ President [Signature]
23 of the City Council.

24 Approved by me this 18th day of September 1982.

25 [Signature]
26 Mayor

1 Filed by me this 18th day of September, 1987.

2
3 Attest: Norman J. Brooks
4 City Comptroller and City Clerk

5
6
7 (SEAL)

8 Published _____

9 By Theresa Dunbar
10 Deputy Clerk

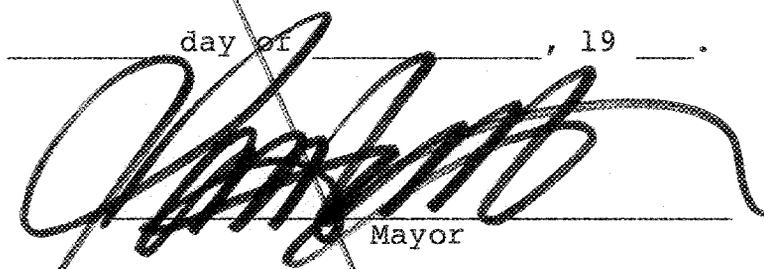
1 M. Be construed to prohibit any person from denying
2 another person the full enjoyment of a place of public accom-
3 modation because of actions by the person seeking full enjoy-
4 ment of the place of public accommodation that constitute a
5 risk to property or to other persons.

6 Section 8. Severability: If any section, subsection,
7 subdivision, paragraph, sentence, clause, or phrase of this
8 chapter, or application thereof to any person or circumstance
9 is held invalid by any court of competent jurisdiction, such
10 decision shall not affect the validity, applicability, or
11 effectiveness of the remaining portions of this chapter, and
12 to this end the provisions of this chapter are declared to be
13 severable.

14 Section 9. This ordinance shall take effect and be in
15 force thirty days from and after its passage and approval, if
16 approved by the Mayor; otherwise it shall take effect at the
17 time it shall become a law under the provisions of city
18 charter.

19 Passed by the City Council the 8th day of September, 1982,
20 and signed by me in open session in authentication of its
21 passage this 8th day of September, 1982, _____
22 President _____ of the City Council.

23 Approved by me this _____ day of _____, 19 ____.

24 
25 _____
26 Mayor

Office Of The Mayor
City of Seattle

RECEIVED

AUG 27 1987



Charles Royer, Mayor

JANE NOLAND
SEATTLE CITY COUNCIL

August 13, 1987

MEMORANDUM

TO: The Honorable Jane Noland
City Council

FROM: Charles Royer

SUBJECT: Public Accommodations

I am encouraged by your sponsorship of the Public Accommodations Ordinance in the Housing and Human Services Committee of City Council on August 4, 1987. While Seattle has strong human rights ordinances in place, the addition of a Public Accommodations Ordinance will expand the protected classes beyond those listed in the Washington State law, and will provide for a legal enforcement mechanism on the local level.

It has long been a practice of the City of Seattle to promote and enforce equal treatment in housing and employment, regardless of an individual's race, color, sex, marital status, parental status, sexual orientation, political ideology, creed, religion, national origin, ancestry, or any sensory, mental, or physical handicap. However, we have needed this key ordinance to eliminate and prevent any unlawful discrimination in public accommodations and to ensure full enjoyment of these same public accommodations by all of our citizens. We have also needed to work with the state law as our guideline, but to go beyond the state defined protected classes to include those classes that are part of the City's fair employment and housing human rights ordinances, such as: parental status, marital status, sexual orientation, political ideology, and religion. The Public Accommodations Ordinance will help individuals, groups, or organizations have access to use and enjoy public accommodations equally without regard to protected class membership.

The Honorable Jane Noland
August 13, 1987
Page two

For example, organizations will be assured of their right to use or rent a hall, regardless of political ideology or race, when this same hall is, as a matter of course, rented or used by other like organizations. Individuals will have access to and equitable treatment by publicly marketed facilities, such as church-owned nursing homes, restaurants, and hotels without regard to religion, sexual orientation, or particular type of handicap.

We recognize that instances of public accommodation discrimination do still occur in our community. Because we as a city are committed to curtailing this discrimination and maintaining basic human rights for all of our citizenry, this proposed ordinance is indeed an important and timely piece of legislation.

THE CITY OF SEATTLE

LAW DEPARTMENT

MUNICIPAL BUILDING - SEATTLE, WASHINGTON 98104

AREA CODE 206 TELEPHONE 625-2402

DOUGLAS N. JEWETT, CITY ATTORNEY

August 31, 1987

Michael Spence
Governmental Affairs Director
Seattle-King County Board of Realtors
2810 Eastlake Avenue East
Seattle, Washington 98102

Dear Mr. Spence:

Councilmember Jane Noland has asked this office to address the concern raised in your letter of August 26, 1987 that the proposed amendments to the City's Open Housing Ordinance are "de facto rent control." Your concern is unwarranted.

You have cited the first clause of proposed SMC 14.08.040 C, which prohibits charging more than uniform rates, as "de facto rent control." That clause must be read together with the balance of the sentence. The prohibition is against charging a person more than uniform rates "because of the person's race, color, religion, ancestry, sex [etc.] . . ." Charging dissimilar rates for other than discriminatory reasons would not be prohibited by proposed SMC 14.08.040 C.

You should also be aware that most landlords in Seattle are subject to the prohibition against charging discriminatory rents that is contained in the existing Open Housing Ordinance. See SMC 14.08.040. The proposed Public Accommodations Ordinance is intended to extend antidiscrimination prohibitions to motels, hotels, restaurants and other service providers. Nothing in proposed SMC 14.08.040 C, which is modeled on the State public accommodations statute, RCW 49.60.215, suggests the amended Open Housing and Public Accommodations Ordinance would operate as a form of rent control.

Very truly yours,

DOUGLAS N. JEWETT
City Attorney

Randy Gainer
By RANDY GAINER

Assistant City Attorney

RG:bjw

cc: Councilmember Jane Noland

THE CITY OF SEATTLE

LAW DEPARTMENT

MUNICIPAL BUILDING . SEATTLE WASHINGTON 98104

AREA CODE 206 TELEPHONE 625-2402

DOUGLAS N. JEWETT, CITY ATTORNEY

July 28, 1987

Honorable Jane Noland
Chair, Housing and Human
Services Committee
The City of Seattle City Council

Re: Public Accommodations Ordinance

Honorable Councilmember Noland:

Pursuant to your request, attached is a draft of an ordinance which would prohibit discrimination in places of public accommodation in the City. As you suggested, the extension of the City's human rights jurisdiction to public accommodations is proposed as a package of amendments to the Open Housing Ordinance. By this method, the current definitions and administrative procedures contained in the Open Housing Ordinance can be applied to public accommodations issues without the need for duplicating those definitions and procedures in a separate chapter of the Seattle Municipal Code.

The critical sections of the proposed draft, the definitions of "place of public accommodation" and "full enjoyment of" and the unfair practices sections proposed as SMC 14.08.020 S and J and 14.08.040 C and D, were adapted from the State public accommodations statute, i.e., RCW 49.60.040 and 49.60.215. Some changes were made in this adaptation.

A proviso to the definition of "public accommodation" in RCW 49.60.040 excludes "fraternal organizations" and other "bona fide clubs" that are "distinctly private." The substance of the proviso is included in proposed SMC 14.08.190 K. "Fraternal organizations" have been deleted from the list of excluded clubs pursuant to the United States Supreme Court's decision in Board of Directors of Rotary International v. Rotary Club of Duarte, ___ U.S. ___, 95 L.Ed.2d 474 (1987). The Court held in that decision that California's public accommodations statute could be applied to the Rotary Clubs. It is presumed that you wish to include such clubs within the provisions of the proposed ordinance.

Honorable Jane Noland
July 28, 1987
Page 2

Proposed SMC 14.08.190 K also differs from the proviso to RCW 45.60.040's definition of public accommodation by excluding noncommercial church-run facilities. Current SMC 14.08.190 C exempts church-owned facilities which are non-commercial from the provisions of the Open Housing Ordinance. The United States Supreme Court's decision in Bishop of the Church of Jesus Christ of Latter Day Saints v. Amos, 55 USLW 5005 (1987), found an exemption of church-run activities from the scope of Title VII of the 1964 Civil Rights Act to be constitutional. It is presumed you do not wish to include noncommercial church-run facilities within the scope of the proposed ordinance.

RCW 49.60.215 applies to educational institutions and schools of special instruction. Because the City does not have authority to enforce human rights measures against State schools, these phrases were amended to read "private educational institution" and "private school of special instruction" in proposed SMC 14.08.020 S. The two provisos at the end of RCW 49.60.215 have been restated as exclusions, i.e., as proposed SMC 14.08.090 L and M. Finally, a "catch-all" unfair practice, the denial of full enjoyment, was added to those unfair practices adapted from RCW 49.60.215. See proposed SMC 14.08.040 C.

Another way in which the proposed ordinance differs from its State counterpart is the inclusion of the additional protected classes of "marital status", "parental status", "sexual orientation", "political ideology", and "religion". The definition of all of these terms remains as in the current Open Housing Ordinance.

A question arose in our discussion whether the inclusion of "the right to purchase any service" in proposed SMC 14.08.020 J and of "any place . . . for the sale of . . . services . . ." in proposed SMC 14.08.020 S might affect whether insurance providers could lawfully consider AIDS antibody test results in providing insurance. Because the proposed ordinance covers "handicap" as a protected class and given the broad proposed language quoted above, you asked that we research this issue.

Honorable Jane Noland
July 28, 1987
Page 3

State insurance laws, RCW 48.01.020--48.90.170, govern insurance matters in the State. Pursuant to the authority granted to him by the legislature in RCW 49.02.060(3), the State Insurance Commissioner has adopted rules which permit insurers to use specific AIDS antibody testing to assign AIDS antibody carriers to the appropriate "risk groups". See WAC 284-90-010--284-90-030 (1986), a copy of which is attached for your reference.

The extensive nature of the State insurance laws and the existence of a rule regarding the use of AIDS antibody test results by insurers raises the question whether the City is precluded from enacting legislation that would conflict with the State rule. The rules of law which provide the framework for the analysis of this question were concisely stated by the Washington Supreme Court in Snohomish County v. State, 97 Wn.2d 646, 649, 648 P.2d 430 (1982):

"Const. art. 11, § 11 grants a county the power to 'make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.' The county's police power is as extensive as that of the Legislature, so long as the subject matter is local and the regulation does not conflict with general laws. State v. Seattle, 94 Wn.2d 162, 165, 615 P.2d 461 (1980).

"In State v. Lundquist, 60 Wn.2d 397, 401, 374 P.2d 246 (1962), we stated that the test to ascertain whether a local ordinance conflicts with general laws is 'whether the ordinance permits or licenses that which the statute forbids and prohibits, and vice versa . . . Judged by such a test, an ordinance is in conflict if it forbids that which the statute permits.' (Citations omitted.) We have recognized concurrent jurisdiction by two governmental bodies in certain instances. However, '[w]hether there be room for the exercise of concurrent jurisdiction in a given instance necessarily depends upon the legislative intent to be derived from an analysis of the statute involved.' Lenci v. Seattle, 63 Wn.2d 664, 669, 338 P.2d 926 (1964). Thus, in determining whether the state statutes and local regulation herein can coexist, we must examine the intent of the Legislature."

Honorable Jane Noland
 July 28, 1987
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Although the Court in Snohomish County v. State was discussing the conflict between a county ordinance and a state statute, Article 11, Section 11 of the State Constitution grants authority to both counties and cities. The preemption analysis discussed in Snohomish County v. State must be followed in analyzing the potential conflict between the proposed City ordinance and State insurance law.

Applying the analysis dictated by Snohomish County v. State, the intent of the Legislature in enacting State insurance laws must be examined. RCW 48.01.020 states in part: "All . . . insurance transactions in this state . . . are governed by this code." The Washington Supreme Court has stated regarding the Insurance Act of 1911: "The act supercedes and repeals all prior acts on the same subject, is a complete insurance code, and covers the entire subject of insurance. . . ." Davis-Kaiser Co. v. Colonial Fire Insurance Co., 91 Wash. 383, 386, 157 Pac. 870 (1916). The Court described the purpose of a 1947 act which amended the 1911 legislation and created the State Insurance Code in Kueckelhan v. Federal Old Line Insurance Co., 69 Wn.2d 392, 402, 418 P.2d 443 (1966): "The primary import of the act was to establish a broad comprehensive code to govern the insurance industry. . . ." The language of RCW 48.01.020 and the Supreme Court's characterization of both the 1911 Insurance Act and the 1947 act establish that the Legislature intended to preempt the field of insurance regulation in the State.

The proposed ordinance, therefore, may not lawfully be applied to prohibit the use of AIDS antibody test results by insurers. Such an application of the ordinance would place it in conflict with State law: "'an ordinance is in conflict if it forbids that which the statute permits.' . . ." Snohomish County v. State, supra.

This conclusion is not affected by the fact that the State authorization for insurers to use AIDS antibody test results is found in the Insurance Commissioner's rules rather than in the insurance statute itself. The rules must be presumed valid and almost certainly would be upheld by a court, if challenged, as they appear to be "reasonably consistent with" the State insurance code provisions they implement. See Hi-Starr, Inc. v. Liquor Control Board, 106 Wn.2d 455, 459, 722 P.2d 808 (1986).

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We hope the above discussion is helpful. If you have additional questions or would like to have changes made in the proposed ordinance, please contact me at 684-8229.

Sincerely,

DOUGLAS N. JEWETT
City Attorney

By 
RANDY GAINER
Assistant City Attorney

RG:et
7:LET6.

THE CITY OF SEATTLE

LAW DEPARTMENT

MUNICIPAL BUILDING . SEATTLE, WASHINGTON 98104

AREA CODE 206 TELEPHONE 625-2402

DOUGLAS N. JEWETT, CITY ATTORNEY

RECEIVED

AUG 18 1987

August 13, 1987

JANE NOLAND
SEATTLE CITY COUNCIL

Honorable Jane Noland
Chair, Housing and Human Services Committee
The City of Seattle City Council

Re: Proposed Public Accommodations Ordinance

Honorable Councilmember Noland:

Pursuant to your request, enclosed is a document that compares the language used in the proposed City public accommodations ordinance and the language contained in the current State public accommodations statute. Words used in the proposed City ordinance that are not included in the State statute are underlined in the sections of the proposed ordinance reproduced in the first column of the enclosed document. Words used in the State statute not included in the proposed ordinance are bracketed with double parentheses and lined-through in the sections of the State statute reproduced in the second column of the document. Explanations for the differences in the proposed ordinance and the State statute are stated in the third column of the document.

I hope the comparison of the proposed City ordinance and current State statute is useful.

Sincerely,

DOUGLAS N. JEWETT
City Attorney

Randy Gainer

By RANDY GAINER
Assistant City Attorney

RG:bjw
encl.

cc: Councilmember Sam Smith
Councilmembr Paul Kraabel

PROPOSED PUBLIC ACCOMMODATION AMENDMENTS
TO CITY OPEN HOUSING ORDINANCE

CURRENT STATE PUBLIC ACCOMMODATION
STATUTE

EXPLANATION OF DIFFERENCES BETWEEN
PROPOSED CITY ORDINANCE AND CURRENT STATE
STATUTE

S.M.C. 14.08.020 J:

J. "Full enjoyment of" includes the right to purchase any service, commodity, or article of personal property offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement, without acts directly or indirectly causing persons of any particular race, color, sex, marital status, parental status, sexual orientation, political ideology, creed, religion, national origin, ancestry, or any sensory, mental or physical handicap, or a handicapped person using a trained guide dog, to be treated as not welcome, accepted, desired, or solicited.

R.C.W. 49.60.040

"Full enjoyment of" includes the right to purchase any service, commodity, or article of personal property offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement, without acts directly or indirectly causing persons of any particular race, creed, color, sex, or with any sensory, mental, or physical handicap, or a dog guide, to be treated as not welcome, accepted, desired, or solicited;

Those classes of persons protected under Seattle's Open Housing Ordinance (except those covered by the "age" category) but not protected pursuant to the State statute have been included in the proposed ordinance. Also, in this section of the proposed ordinance and other proposed sections, a handicapped person's use of a trained guide dog is referred to rather than a blind or deaf person's use of such guide dogs.

S.M.C. 14.08.020 S:

S. "place of public accommodation" includes, but is not limited to, any place, licensed or unlicensed, kept for gain, hire, or reward, or where charges are made for admission, service, occupancy, or use of any property or facilities, whether conducted for the entertainment, housing, or lodging of transient guests, or for the benefit, use, or accommodation of those

R.C.W. 49.60.040

"(Any) place of public ((reset)) accommodation, ((assemblage) of amusement)" includes, but is not limited to, any place, licensed or unlicensed, kept for gain, hire, or reward, or where charges are made for admission, service, occupancy, or use of any property or facilities, whether conducted for the entertainment, housing or lodging of transient

"Any," "resort," "assemblage" and "or amusement" were deleted from the proposed ordinance definition of "place of public accommodation" because the words are surplusage which do not add anything in the in the State definition. The proposed ordinance uses the phrase "place of public accommodation" throughout.

seeking health, recreation, or rest, or for the burial or other disposition of human remains, or for the sale of goods, merchandise, services, or personal property, or for the rendering or personal services, or for public conveyance or transportation on land, water, or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports, or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates, or assembles for amusement, recreation, or public purposes, or public halls, public elevators, and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or private educational institution, or private schools of special instruction, or nursery schools, or day care centers or children's camps.

S.M.C. 14.08.040 K:

K. As it pertains to places of public accommodations: be construed to include or apply to any institute, bona fide club or place of accommodation which is by its nature distinctly private, though where public use is permitted that use shall be covered by this chapter; nor

: guests, or for the benefit, use, or accommodation of those seeking health, recreation, or rest, or for the burial or other disposition of human remains, or for the sale of goods, merchandise, services, or for the rendering of personal services, or for the rendering of personal property, or for public conveyance: or transportation on land, water, or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, where: public amusement, entertainment, sports, or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates, or assembles for amusement, recreation, or public purposes, or public halls, public elevators, and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or educational institution, or schools of special instruction, or nursery schools, or day care centers or children's camps: ((provided, that nothing contained in this definition shall)) be construed to include or apply to any institute, bona fide club, or place of accommodation, which is by its nature distinctly private, ((including fraternal organizations)) though where public use is permitted that use shall be covered by this chapter; nor ((shall anything contained in this definition)) apply to any ((educational facility, ((columbarium, crematory, mausoleum, or cemetery)) operated or maintained by a bona fide religious ((or sectarian)) institution;

"Private" was included to modify schools because of concerns about intruding on the authority of the State in its management of public schools.

"provided, that nothing contained in this definition shall" was deleted because a phrase to the same effect is already contained in the exclusion section of the Open Housing Ordinance. The provisos in the State definition of "public . . . accommodation" are proposed as S.M.C. 14.08.190 K to S.M.C. 14.08.190 begins with phrase. "Nothing in this chapter shall:

"Including fraternal organizations" was deleted from the proposed ordinance because it is presumed the Council wishes to prohibit discrimination by fraternal organizations. See the law Department's letter to Councilmember Noland of July 28, 1987.

"Educational, "columbarium, crematory, mausoleum, or cemetery" were deleted from the proposed ordinance because they add nothing to the broad description "any facility" that is included. "Or sectarian" was deleted because it is redundant of the term "religious."

be construed to apply to any noncommercial facility operated or maintained by a bona fide religious institution;

S.M.C. 14.08.040 C:

It is an unfair practice for any person or his or her agent or employee to commit an act which directly or indirectly requires any person to pay a larger sum than the uniform rates charged other persons; or to refuse or withhold from any person the admission, patronage, custom, presence, frequenting, dwelling, staying, or lodging in any place of public accommodation; or to deny directly or indirectly to any person the full enjoyment of any of the goods, services, accommodations, facilities, privileges or advantages in any place of public accommodation because of the person's race, color, religion, ancestry, sex, marital status, parental status, sexual orientation, political ideology, creed, national origin, sensory, mental or physical handicap, or the use of a trained

R.C.W. 49.60.215:

It ((shall be)) an unfair practice for any person or his agent or employee to commit an act which directly or indirectly ((results in any distinction, restriction, or discrimination)) or the requiring of any person to pay a larger sum than the uniform rates charged other persons, or the refusing or withholding from any person the admission, patronage, custom, presence, frequenting, dwelling, staying, or lodging in any place of public ((accommodation, ((assemblage or amusement))) except for conditions and limitations established by law and applicable to all persons, regardless of race, creed, color, national origin, sex, the presence of any sensory, mental, or physical handicap, or the use of a trained dog guide by a ((blind, deaf, or physically disabled))

"Noncommercial" was added to the proposed ordinance because of a similar limitation on the reach of the current Open Housing Ordinance. The Open Housing Ordinance allows a religious organization to limit the "sale, rental or occupancy of dwellings which it owns or operates for others for other than a commercial purpose" Further, regulating whom a religious organization must allow to use its noncommercial facilities probably would violate the First Amendment to the U. S. Constitution, and Article I, § 11 and Article XXVI, § 1 of the State Constitution.

The phrase "results in any distinction, restriction, or discrimination" was omitted from the proposed ordinance because it is unnecessary to accomplish the intended result and because the term "discrimination" as it is currently used in the Open Housing Ordinance includes a prohibition against distinctions based on age, a class not included in the proposed amendments.

guide dog by a handicapped person except for conditions and limitations established by law and applicable to all persons regardless of race, color, religion, ancestry, sex, marital status, parental status, sexual orientation, political ideology, creed, national origin, sensory, mental or physical handicap, or the use of a trained guide dog by a handicapped person.

S.M.C. 14.08.190 L & M:

L. As it pertains to places of public accommodation, be construed to require structural changes, modifications, or additions to make any place accessible to a handicapped person except as otherwise required by law;

M. Be construed to prohibit any person from denying another person the full enjoyment of a place of public accommodation because of actions by the person making full enjoyment of the place of public accommodation that constitute a risk to property or to other persons.

S.M.C. 14.08.040 D

D. It is an unfair practice for any person, agent or employee to print, circulate, post, mail or otherwise cause directly or indirectly to be published a statement, advertisement, or sign which indicates directly or indirectly that the

The provisos to R.C.W. 49.60.215 were slightly reworded and included among the exclusions proposed as S.M.C. 14.08.190 L & M.

person: ((provided, that this section shall not)) be construed to require structural changes, modifications, or additions to make any place accessible to a handicapped person except as otherwise required by law: ((provided that behavior or) actions constituting a risk to property or other persons ((can be grounds for refusal and shall not constitute an unfair practice.))

Proposed S.M.C. 14.08.040 D has as its basis current S.M.C. 14.08.070 B which makes unlawful discriminatory housing advertisements. There is a similar State statute which also applies only to housing advertisements. See R.C.W. 49.60.222(6) and 1976 AGO No. 14.

full enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation will be refused, withheld from, denied or in some manner limited or restricted toward an individual; or that an individual's patronage of or presence at a place of public accommodation is objectionable, unwelcome, unacceptable or undesirable because of a person's race, color, religion, creed, ancestry, national origin, sex, marital status, parental status, sexual orientation, sensory, mental or physical handicap or political ideology, or handicapped person's use of a trained guide dog.

C-124-X

Affidavit of Publication

STATE OF WASHINGTON KING COUNTY—SS.

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

Ordinance No. 113610

was published on September 30, 1987

[Signature]
Subscribed and sworn to before me on

September 30, 1987

[Signature]
Notary Public for the State of Washington,
residing in Seattle.