

Ordinance No. 119601

(Kla)

The City of Seattle  
Council Bill/Ordinance

Council Bill No. 112927

AN ORDINANCE to be known as the Fair Contracting Practices Ordinance and prohibiting discrimination in contracting; providing remedies for victims of such discrimination, and creating a new position and increasing expenditure allowance in the 1999 Seattle Office for Civil Rights budget.

CF No. \_\_\_\_\_

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| Date Introduced:                                |   |
| Date 1st Referred: <u>AUG 02 1999</u>           | To: (committee) <u>Finance &amp; Budget Committee</u>                 |
| Date Re - Referred: <u>AUG 02 1999</u>          | To: (committee)   |
| Date Re - Returned:                             | To: (committee)   |
| Date of Final Passage: <u>8/9/99</u>            | Full Council Vote: <u>6-0 excused: Conlin, Podolowski, Sternbrunn</u> |
| Date Presented to Mayor: <u>8/10/99</u>         | Date Approved: <u>AUG 16 1999</u>                                     |
| Date Returned to City Clerk: <u>AUG 16 1999</u> | Date Published: T.O. <u>✓</u><br>ET. <u>✗</u> 17 pages                |
| Date Vetoes by Mayor:                           | Date Veto Published:  |
| Date Passed Over Veto:                          | Veto Sustained:   |

passed 4-0

*M. ...*

8/9/99 passed as

This file is complete and ready

*Law Department*

Law Dept. Review

# The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: \_\_\_\_\_

CHOE  
Councilmember

## Committee Action:

passed 4-0

*Masha Choe*

8/9/99 passed as amended updated 8/10/99  
*(me)*

This file is complete and ready for presentation to Full Council. Committee: \_\_\_\_\_

*Stenhouse*

(initial/date)

## Law Department

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| Law Dept. Review | GMP Review | <input checked="" type="checkbox"/> City Clerk Review | Electronic Copy Loaded | Indexed |
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ORDINANCE 119601

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2 AN ORDINANCE to be known as the Fair Contracting Practices Ordinance and prohibiting  
3 discrimination in contracting; providing remedies for victims of such discrimination, and creating a new  
4 position and increasing expenditure allowance in the 1999 Seattle Office for Civil Rights budget.

4 BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

5 Section 1. Statement of purpose. This ordinance is an exercise of the police power for the  
6 protection of the public welfare, health, peace and safety of the residents of the City of Seattle and in  
7 fulfillment of the provisions of the constitution of this state. The City Council hereby finds and declares  
8 that practices of discrimination in public or private contracting against any person on the basis of race,  
9 color, sex, marital status, sexual orientation, gender identity, political ideology, age, creed, religion,  
10 ancestry, national origin, or the presence of any sensory, mental or physical disability constitute matters  
11 of local concern and are contrary to the public welfare, health, peace and safety of the residents of  
12 Seattle. The provisions of this ordinance shall apply to the City when acting as a contractor and to other  
13 contractors, subcontractors, suppliers, material suppliers, bonding agencies, contract agencies and other  
14 business entities doing business in the City, and shall be liberally construed for accomplishment of its  
15 policies and purposes. Nothing in this ordinance shall be deemed to deny any persons the right to  
16 institute any action or to pursue any civil or criminal remedy for the violation of such person's civil  
17 rights. Nothing contained in this ordinance is intended to be nor shall be construed to create or form the  
18 basis for any liability on the part of the City, or its officers or agents, for any injury or damage resulting  
19 from or by reason of any act or omission in connection with the implementation or enforcement of this  
20 ordinance on the part of the City by its officers, employees or agents. Nothing in this ordinance shall be  
21 presumed to toll the statute of limitations for any claims under federal or state statute. Nothing in this  
22 ordinance shall be construed to prohibit or apply to actions taken in good faith against any person by a  
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1 contractor based solely upon their performance, qualifications, or ability to perform in accordance with  
2 the terms of a contract or for other nondiscriminatory reasons.

3 Section 2. Definitions. When used in this ordinance, unless the context otherwise requires:

4 "Business enterprise" means any licensed business organization located in or doing business in  
5 the City of Seattle.

6 "Charging party" means the person aggrieved by an alleged unfair contracting practice or the  
7 person making a charge on another person's behalf, or the Director when the Director files a charge.

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

11 "Commercially significant contract" means any contract for the provision of services (including  
12 but not limited to construction services, consulting services or bonding or other financial services) or the  
13 sale of goods that exceeds the amount established for such contracts by the Director.

14 "Contract" means any agreement to perform a service or provide goods that entails a legally  
15 binding obligation, where such contract is executed within, or intended to be wholly or partly performed  
16 within, the City of Seattle.

17 "Contracting agency" means any person who for compensation engages in recruiting, procuring,  
18 referral or placement of contracts with a contractor.

19 "Contractor" means any business enterprise including but not limited to any company,  
20 partnership, corporation or other legal entity, excluding real property lessors and lessees, contracting to  
21 do business within the City including but not limited to public work contractors, consultant contractors,  
22 providers of professional services, service agencies, vendors, and suppliers selling or furnishing  
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1 materials, equipment, goods or services, but not including governmental agencies other than The City of  
2 Seattle.

3 "Department" means the Office for Civil Rights.

4 "Director" means the Director of the Office for Civil Rights.

5 "Discrimination," "discriminate," and/or "discriminatory act" means any act (other than an action  
6 taken in accordance with a lawful affirmative action program) or failure to act whether by itself or as  
7 part of a practice, the effect of which is to adversely affect or differentiate between or among individuals  
8 or groups of individuals by reason of race, color, age, sex, marital status, sexual orientation, gender  
9 identity, political ideology, creed, religion, ancestry, national origin; or the presence of any sensory,  
10 mental or physical handicap, unless based upon a bona fide occupational qualification.

11 "Gender identity" means a person's identity, expression, or physical characteristics, whether or  
12 not traditionally associated with one's biological sex or one's sex at birth, including transsexual,  
13 transvestite, and transgendered, and including a person's attitudes, preferences, beliefs, and practices  
14 pertaining thereto.

15 "Marital status" means the presence or absence of a marital relationship and includes the status of  
16 married, separated, divorced, engaged, widowed, single or cohabitating.

17 "Party" shall include the person making a charge alleging an unfair contracting practice and the  
18 person alleged to have committed an unfair contracting practice and the Office for Civil Rights.

19 "Person" includes one (1) or more individuals, partnerships, associations, organizations, trade or  
20 professional associations, corporations, public corporations, cooperatives, legal representatives, trustees,  
21 trustees in bankruptcy and receivers, or any group of persons; it includes any owner, lessee, proprietor,  
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1 manager, agent or employee, whether one (1) or more natural persons, and further includes any  
2 department, office, agency or instrumentality of the City.

3 "Political ideology" means any idea or belief, or coordinated body of ideas or beliefs, relating to  
4 the purpose, conduct, organization, function or basis of government and related institutions and  
5 activities, whether or not characteristic of any political party or group. This term includes membership in  
6 a political party or group and includes conduct, reasonably related to political ideology, which does not  
7 interfere with job performance.

8 "Respondent" means any person who has been alleged or found to have committed an unfair  
9 contracting practice prohibited by this ordinance.

10 "Sexual orientation" means actual or perceived male or female heterosexuality, bisexuality, or  
11 homosexuality and includes a person's attitudes, preferences, beliefs and practices pertaining thereto.

12 "Trade Association" means an association of business organizations engaged in similar fields of  
13 business which is formed for mutual protection, the interchange of ideas, information and statistics or  
14 the maintenance of standards within their industry.

15 Section 3. Unfair contracting practices prohibited. It is an unfair contracting practice for any:

16 A. business enterprise or City department to discriminate against any person with respect to the  
17 award or referral of a contract or with respect to the conditions, terms, price, or performance standards,  
18 other provisions of a contract;

19 B. contracting agency, or trade association or labor organization to discriminate against any  
20 person with respect to membership rights and privileges, admission to or participation in any guidance  
21 program, or other business or occupational training program;

1 C. contractor, contracting agency bonding agency trade association or labor organization to  
2 print, circulate, or cause to be printed, published, or circulated, any statement, advertisement, or  
3 publication relating to contracting or membership, or to use any form of application therefor, which  
4 indicates any discrimination unless based upon a bona fide occupational qualification;

5 D. contracting agency or trade association to discriminate against any person with respect to any  
6 referral of a contract opportunity or assignment of a particular contract;

7 E. contractor, contract agency, trade association or labor organization to retaliate against any  
8 person because that person has opposed an act of discrimination or because that person has made a  
9 charge, testified or assisted in any manner in any investigation, proceeding or hearing initiated under the  
10 provisions of this ordinance;

11 Section 4. Administration and Enforcement. The Office for Civil Rights shall receive,  
12 investigate, and issue findings with respect to charges alleging unfair practices as defined by this  
13 ordinance, conciliate and settle the same by agreement, and monitor and enforce any agreements or  
14 orders resulting therefrom or from a subsequent hearing thereon under and pursuant to the terms of this  
15 ordinance; and shall have such powers and duties in the performance of these functions as are defined in  
16 this ordinance and otherwise necessary and proper in the performance of the same and provided for by  
17 law. The Department shall further assist other City agencies and departments upon request in  
18 effectuating and promoting the purposes of this ordinance.

19 The Director is authorized and directed to promulgate rules consistent with this ordinance.

20 Section 5. Filing charges.

21 A. An individual charge alleging an unfair contracting practice in connection with a  
22 commercially significant contract may be filed by or on behalf of any person who claims to be aggrieved  
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1 by an unfair contracting practice. A charge alleging that a group is being subjected to an unfair  
2 contracting practice in connection with a commercially significant contract may be filed by any member  
3 of the group, the Director, a state or federal agency concerned with discrimination in contracting  
4 whenever such an agency has reason to believe that an unfair contracting practice has been or is being  
5 committed, or any trade association which has reason to believe that an unfair contracting practice has  
6 been or is being committed against any of its members.

7 B. A charge alleging an unfair contracting practice shall be in writing on a form or in a format  
8 determined by the Department, and signed under oath or affirmation by or on behalf of a charging party  
9 before the Director, one of the Department's employees, or any other person authorized to administer  
10 oaths, and shall describe the unfair contracting practice complained of and should include a statement of  
11 the dates, places and circumstances and the persons responsible for such acts and practices.

12 C. Whenever charges are made by or on behalf of a person claiming to be aggrieved, the person  
13 making the charge must provide the Director with the name, address and telephone number of the  
14 individual on whose behalf the charge is made. Thereafter, the Director shall verify the authorization of  
15 such charge by the person on whose behalf the charge is made and upon the request of such person may  
16 keep his or her identity confidential to the extent allowed by law.

17 D. A charge shall not be rejected as insufficient because of failure to include all required  
18 information so long as it substantially satisfies the informational requirements necessary for processing.

19 E. A charge alleging an unfair contracting practice or pattern of unfair practices may also be  
20 filed by the Director whenever the Director has reason to believe that any person has been engaged or is  
21 engaging in an unfair contracting practice.



1 Section 6. Charge-Time for filing. Charges filed under this ordinance must be filed with the  
2 Department within one hundred eighty (180) days after the occurrence of the alleged unfair contracting  
3 practice.

4 Section 7. Charge-Amendments. The charging party or the Department may amend a charge to  
5 cure technical defects or omissions; or to clarify and amplify allegations made therein; or to add  
6 allegations related to or arising out of the subject matter set forth, or attempted to be set forth, in the  
7 original charge. For jurisdictional purposes, such amendments shall relate back to the date the original  
8 charge was first filed. The charging party may also amend a charge to include allegations of additional  
9 unrelated discriminatory acts and/or retaliation which arose after filing of the original charge. The  
10 amendment must be filed within one hundred eighty (180) days after the occurrence of the additional  
11 discriminatory act and/or retaliation and prior to the Department's issuance of findings of fact and a  
12 determination with respect to the original charge. Such amendments may be made at any time during the  
13 investigation of the original charge so long as the Department will have adequate time to investigate  
14 such additional allegations and the parties will have adequate time to present the Department with  
15 evidence concerning such allegations before the issuance of findings of fact and a determination.

16 Section 8. Charge-Notice and investigation.

17 A. The Director shall cause to be served or mailed by certified mail, return receipt requested, a  
18 copy of the charge on the respondent within twenty (20) days after the filing of the charge and shall  
19 promptly make an investigation thereof.

20 B. The investigation shall be directed to ascertain the facts concerning the unfair practice alleged  
21 in the charge, and shall be conducted in an objective and impartial manner.

1 C. During the investigation the Director shall consider any statement of position or evidence  
2 with respect to the allegations of the charge which the charging party or the respondent wishes to submit.  
3 The Director shall have authority to sign and issue subpoenas requiring the attendance and testimony of  
4 witnesses, the production of evidence including but not limited to books, records, correspondence or  
5 documents in the possession or under the control of the person subpoenaed, and access to evidence for  
6 the purpose of examination and copying, and conduct discovery procedures which may include the  
7 taking of interrogatories and oral depositions.

8 D. The Director may require a fact finding conference or participation in another process with  
9 the respondent and any of respondent's agents and witnesses and charging party during the investigation  
10 in order to define the issues, determine which elements are undisputed, resolve those issues which can be  
11 resolved, and afford an opportunity to discuss or negotiate settlement. Parties may have their legal  
12 counsel present if desired.

13 Section 9. Findings of fact and determination of reasonable cause or no reasonable cause.

14 A. The results of the investigation shall be reduced to written findings of fact and a  
15 determination shall be made by the Director that there is or is not reasonable cause for believing that an  
16 unfair practice has been or is being committed, which determination shall also be in writing and issued  
17 with the written findings of fact. Where a City department is a respondent the Director shall issue such  
18 findings and determination only after having submitted proposed findings and determinations to the  
19 respondent and charging party for review and comment. With respect to the findings and determination,  
20 "issued" shall be defined as signed and dated by the Director.

21 B. The findings of fact and determination shall be furnished promptly to the respondent and  
22 charging party.  
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1 C. Once issued to the parties, the Director's findings of fact, determination and order may not be  
2 amended or withdrawn except upon the agreement of the parties, provided, that the Director may correct  
3 clerical mistakes or errors arising from oversight or omission upon a motion from a party or upon the  
4 Director's own motion.

5 Section 10. Determination of no reasonable cause. If a determination is made that there is no  
6 reasonable cause for believing an unfair contracting practice under this ordinance has been committed,  
7 the charging party shall have the right to file a written request with the Director asking for  
8 reconsideration of the finding. The Director shall respond in writing within a reasonable time by  
9 granting or denying the request.

10 Section 11. Determination of reasonable cause-Conciliation and settlement of cases involving all  
11 respondents except City departments.

12 A. In all cases except a case in which a City department is the respondent, if a determination is  
13 made that reasonable cause exists to believe that an unfair practice has occurred, the Director shall  
14 endeavor to eliminate the unfair practice by conference, conciliation, and persuasion. Conditions of  
15 settlement may include (but are not limited to) the elimination of the unfair contracting practice, hiring,  
16 reinstatement, lost profits, attorney's fees, admittance or restoration to membership in a trade association,  
17 admittance to participation in a training, or such other action which will effectuate the purposes of this  
18 ordinance, including action which could be ordered by a court, except that damages for humiliation and  
19 mental suffering shall not exceed Ten Thousand Dollars (\$10,000.00). Any settlement agreement shall  
20 be reduced to writing and signed by the Director and the respondent. An order shall then be entered by  
21 the Director setting forth the terms of the agreement. Copies of such order shall be delivered to all  
22 affected parties.

1 B. In case of failure to reach an agreement and of conciliation and upon a written finding to that  
2 effect furnished to the charging party and respondent, except a case in which a City department is a  
3 respondent, the Director shall promptly cause to be delivered the entire investigatory file, including the  
4 charge and any and all findings made, to the City Attorney for further proceedings and hearing under  
5 this ordinance pursuant to Section 13.

6 Section 12. Determinations of reasonable cause - Conciliation, settlement and conclusion of  
7 cases involving City departments as respondents.

8 In all cases in which a City department is a respondent:

9 A. A determination of reasonable cause by the Director shall be deemed a finding that an unfair  
10 contracting practice has been committed by respondent and is dispositive of this issue for all future  
11 proceedings under this ordinance.

12 B. Within sixty (60) days of a determination of reasonable cause, the Director shall confer with  
13 the parties and determine an appropriate remedy, which remedy may include (but is not limited to)  
14 hiring, reinstatement, lost profits, attorney's fees, admittance or restoration to membership in a trade  
15 association, admittance to participation in a training, or such other action as will effectuate the purposes  
16 of this ordinance, including action which could be ordered by a court, except that damages for  
17 humiliation and mental suffering shall not exceed Ten Thousand Dollars (\$10,000.00). Such remedy  
18 shall be reduced to writing in an order of the Director.

19 C. The charging party must sign a release in the form and manner requested by the Department,  
20 releasing the City from further liability for acts giving rise to the charge in order to obtain the benefits of  
21 the remedy provided under this section and before payment can be made. Without such release, the  
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1 Director's order with respect to the charging party's individual relief shall have no force and effect. In  
2 such event the Director shall notify the parties involved in writing.

3 D. In all cases where the remedy determined by the Director includes a monetary payment which  
4 exceeds the sum of Ten Thousand Dollars (\$10,000.00), the charge or claim, the Director's  
5 determination, order, the charging party's signed release and such further documentation as may be  
6 required shall be presented to the City Council for passage by separate ordinance. If the City Council  
7 fails or refuses to appropriate the amount ordered by the Director within ninety (90) days, the Director  
8 shall certify the case to the Hearing Examiner for a hearing to determine the appropriate monetary relief  
9 in the case which determination shall be final and binding upon the City.

10 E. Where the Director's order includes a monetary payment of Ten Thousand Dollars  
11 (\$10,000.00) or less, such payment shall be made under the authority and in the form and manner  
12 otherwise provided for by law for payment of such claims.

13 Section 13. Charge and hearing of cases.

14 A. Following submission of the investigatory file from the Director in cases involving all  
15 respondents under Section 11, the City Attorney shall prepare a complaint against such respondent  
16 relating to the charge and facts discovered during the investigation thereof and prosecute the same in the  
17 name and on behalf of the Department and the City at a hearing before the Hearing Examiner and appear  
18 for and represent the interests of the Department and the City at all subsequent proceedings; provided, if  
19 the City Attorney determines that there is no legal basis for a complaint to be filed or for proceedings to  
20 continue, a statement of the reasons therefor shall be filed with the Department, charging party and the  
21 respondent.

1 B. The complaint shall be served on respondent in the usual manner provided by law for service  
2 of complaints and filed with the Seattle Hearing Examiner. A copy of such complaint shall be furnished  
3 to the charging party.

4 C. Within twenty (20) days of the service of such complaint upon it, the respondent shall file its  
5 answer with the Hearing Examiner and serve a copy of the same on the City Attorney.

6 D. Upon the filing of the complaint, the Hearing Examiner shall promptly establish a date for the  
7 hearing of such complaint and give notice thereof to the City Attorney and respondent, and shall  
8 thereafter hold a public hearing on the complaint, which hearing shall commence no earlier than ninety  
9 (90) days nor later than one hundred twenty (120) days from the filing of the complaint, unless otherwise  
10 ordered by the Hearing Examiner.

11 E. After the filing of a complaint with the Hearing Examiner, it may be amended only with the  
12 permission of the Hearing Examiner, which permission shall be granted when justice will be served  
13 thereby and all parties are allowed time to prepare their case with respect to additional or expanded  
14 charges which they did not and could not have reasonably foreseen would be in issue at the hearing.

15 F. The hearing shall be conducted by a Hearing Examiner from the Office of Hearing Examiner,  
16 or a hearing examiner pro tempore appointed by the Hearing Examiner. Such hearings shall be  
17 conducted in accordance with written rules and procedures consistent with this ordinance and the  
18 Administrative Code of the City (Ordinance 102228).

19 Section 14. Decision and order.

20 A. Within thirty (30) days after conclusion of the hearing, the Hearing Examiner presiding at the  
21 hearing shall prepare a written decision and order. The final decision shall be filed as a public record  
22 with the City Clerk, and copies thereof mailed to each party of record and to the Department.  
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1 B. Such decision shall contain a brief summary of the evidence considered and shall contain  
2 findings of fact, conclusions of law upon which the decision is based, and an order detailing the relief  
3 deemed appropriate, together with a brief statement of the reasons therefor.

4 C. In the event the Hearing Examiner determines that a respondent has committed an unfair  
5 contracting practice under this ordinance, the Hearing Examiner may order the respondent to take such  
6 affirmative action or provide for such relief as is deemed necessary to correct the practice, effectuate the  
7 purpose of this ordinance, and secure compliance therewith, including but not limited to hiring,  
8 reinstatement, lost profits, attorney's fees, admittance or restoration to membership in a trade association,  
9 admittance to participation in a training, or such other action which will effectuate the purposes of this  
10 ordinance, including action which could be ordered by a court, except that damages for humiliation and  
11 mental suffering shall not exceed Ten Thousand Dollars (\$10,000.00). Lost profits shall not accrue from  
12 a date more than two (2) years prior to the initial filing of the charge. The Hearing Examiner may also  
13 disqualify the respondent from participating in contracts with the City for a period of up to five (5)  
14 years.

15 D. Respondent shall comply with the provisions of any order affording relief and shall furnish  
16 proof of compliance to the Department as specified in the order. In the event respondent refuses or fails  
17 to comply with the order, the Director shall notify the City Attorney of the same and the City Attorney  
18 shall invoke the aid of the appropriate court to secure enforcement or compliance with the order.

19 Section 15. Violation-Penalty.

20 It is unlawful for any person to willfully engage in an unfair practice under this ordinance or  
21 wilfully resist, prevent, impede or interfere with the Director or Hearing Examiner in the performance of  
22 their duties under this ordinance, or to fail, refuse, or neglect to comply with any lawful order of the  
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1 Director or Hearing Examiner. Conduct made unlawful by this section constitutes a violation subject to  
2 the provisions of Chapter 12A.02 of the Seattle Criminal Code and any person convicted thereof may be  
3 punished by a civil fine or forfeiture not to exceed Five Hundred Dollars (\$500.00).

4 Section 16. Requirement to comply. The City shall include the requirement to comply with this  
5 ordinance, as amended, in all contracts and agreements with recipients of grants and other funds through  
6 or from the City and with organizations which use City buildings, facilities or property or which use  
7 property for which the City is responsible for capital improvements.

8 Section 17 Enforcement by Private Persons

9 A. Any person who claims to have been injured by an unfair contracting practice may  
10 commence a civil action in a court of competent jurisdiction, not later than three years after the  
11 occurrence of the alleged unfair contracting practice or ninety (90) days after a determination of  
12 reasonable cause by the Director, whichever occurs last, to obtain appropriate relief with respect to such  
13 unfair contracting practice.

14 B. A civil action may be filed under this section whether or not an administrative charge has  
15 been filed under Section 6, and without regard to the status of such charge, but if the Department has  
16 obtained a pre-finding or post-finding settlement or conciliation agreement with the consent of the  
17 charging party, no civil action may be filed under this section with respect to the alleged unfair  
18 contracting practice which forms the basis for such complaint except for the purpose of enforcing the  
19 terms of the agreement. To preclude such filing, the charging party must be provided with written notice  
20 that consent to a pre-finding or post-finding settlement or conciliation agreement will terminate the  
21 charging party's right to file a civil action under this section.



1 C. (1) Subject to the provisions of subsection C(2), upon the filing of a civil action involving  
2 the same claim or arising from the same facts and circumstances, whether under this ordinance or similar  
3 law, a complaint of an unfair contracting practice may be administratively closed by the Director.

4 (2) In the event that a court dismisses a private cause of action on grounds that would not  
5 preclude pursuit of a charge under this ordinance, the charging party may request, within 90 days of the  
6 entry of the Court's order of dismissal, that the Department reopen a previously filed charge. Upon such  
7 request, the Director may reopen a case that was administratively closed upon the filing of a civil action.  
8 If the Department closes a case based on a "no reasonable cause" finding, the case shall not be reopened.

9 (3) No complainant or aggrieved person may secure relief from more than one  
10 governmental agency, instrumentality or tribunal for the same harm or injury.

11 (4) Where the complainant or aggrieved person elects to pursue simultaneous claims in  
12 more than one forum, the factual and legal determinations issued by the first tribunal to rule on the  
13 claims may, under the doctrines of "res judicata" or "collateral estoppel," be binding on all or portions of  
14 the claims pending before other tribunals.

15 (5) No civil action may be commenced under this section with respect to an alleged unfair  
16 contracting practice which forms the basis of a complaint if a hearing on the record has been commenced  
17 by the City of Seattle Office of the Hearing Examiner. To preclude such filing, a charging party must be  
18 provided with written notice at least 30 days prior to the commencement of a hearing before the City of  
19 Seattle Office of the Hearing Examiner that the commencement of such a hearing will terminate the  
20 charging party's right to file a civil action.

21 D. In a civil action under this section, if the court, or jury, finds that an unfair contracting  
22 practice has occurred, the court may grant such relief as may be awarded by the Hearing Examiner under  
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1 this ordinance or is authorized by the Washington Law Against Discrimination, Ch. 49.60 RCW, as  
2 amended. Damages awarded under this section for humiliation and mental suffering are not subject to  
3 the limitation of Section 14.

4 E. Upon timely application, the City Attorney may intervene in such civil action, if the City  
5 Attorney certifies that the case is of general public importance, and may obtain such relief as would be  
6 available in an action brought under Section 13. Such intervention shall not be permitted in an action in  
7 which the City is a defendant.

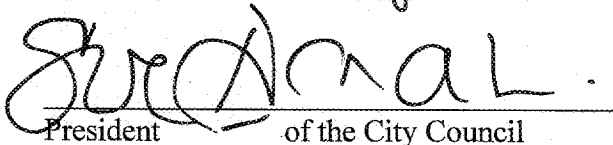
8 Section 18. As requested by the Director of the Seattle Office for Civil Rights (SOCR), the  
9 following position, title and salary is created and added to the 1999 position list of the SOCR:

10 (1) Planning and Development II, 1 FTE \$22.12

11 Section 19. Severability. The provisions of this ordinance are declared to be separate and  
12 severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this  
13 ordinance, or the invalidity of the application thereof to any person or circumstance shall not affect the  
14 validity of the remainder of this ordinance, or the validity of its application to other persons or  
15 circumstances.

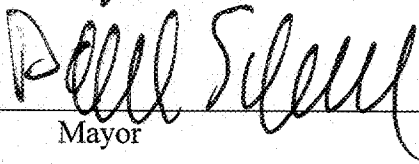
16 Section 20. This ordinance shall take effect and be in force thirty (30) days from and after its  
17 approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after  
18 presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

19 Passed by the City Council the 9th day of August, 1999, and signed by me in open  
20 session in authentication of its passage this 9th day of August, 1999.

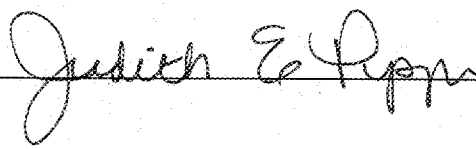
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Approved by me this 16<sup>th</sup> day of August, 1999.

  
Mayor

Filed by me this 16<sup>th</sup> day of August, 1999.

  
City Clerk

(Seal)

# SEATTLE OFFICE FOR CIVIL RIGHTS

## SOCR Rules, Chapter 50 Implementing the Fair Contracting Practices Ordinance 119601

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### 50-100 GENERAL PROVISIONS

#### 50-101. Applicability of Rules.

These rules (Chapter 50) govern the procedures of the Seattle Office for Civil Rights (SOCR) in administering the Fair Contracting Practices Ordinance No. 119601. These rules are to be applied to all contracts governed by the Fair Contracting Practices Ordinance No. 119601. This chapter contains rules of general application. Where rules covering specific situations contained in other chapters of these rules are inconsistent with the general rules, the specific rules control.

Once a complaint of discrimination is filed with the SOCR, these rules govern the procedure from the charging party's initial inquiry until the complaint is withdrawn or the Director or his or her designee dismisses the complaint, administratively closes the case, issues a finding or refers the matter to the City Attorney for prosecution. These rules and any and all amendments to these rules shall apply to complaints pending before SOCR upon adoption. Investigatory actions accomplished before any rules or amendment are adopted need not be redone to comply with the rules or with the amendment.

#### 50-102 Purpose.

The purpose of the Fair Contracting Practices Ordinance the Fair Contracting Practices Ordinance No. 119601, as now or hereafter amended, and these rules are to eliminate discrimination in all contracting activities undertaken between business entities located in or doing business in the City of Seattle, and to ensure that equal access to a nondiscriminatory contracting environment is provided to all parties interested in contracting and doing business within the City of Seattle. This ordinance is intended to protect all Seattle residents from the harm of discrimination in contracting by providing the City with the tools needed to ensure that discrimination in contracting is prevented before it occurs, and successfully resolved in those cases where it is proven to have occurred. However, in the absence of an allegation of discrimination, SOCR will not investigate contract breach or contract interpretation issues.

**50-103      Scope.**

The provisions of the Fair Contracting Practices Ordinance No. 119601, as now or hereafter amended, and these rules apply to all contracting efforts to be performed partially or wholly in the City of Seattle and contracting efforts undertaken by the City or any other business entity doing business in the City. The provisions of this chapter shall be liberally construed in order to accomplish the policies and purposes set forth herein, and shall apply to all contracting efforts undertaken after the effective date of this ordinance.

Such contracts include, but are not limited to, contracts for construction, consulting, services, purchasing contracts, leases, and concession contracts, and contracts for which all or a part of the funds have been provided or administered by business entities or the City through funding agreements with federal, state or local agencies.

**50-104      Relation to Ordinances.**

These rules complement the provisions of the Fair Employment Practices Ordinance, as amended, and the Open Housing Ordinance, as amended..

**50-105      Relationship With Other Laws Or Regulations.**

- A. **Contracts with State or Federal Funding:** On all contracts in which other public agency funding is used, the requirements of the Fair Contracting Practices Ordinance No. 119601, and these rules shall apply in addition to the requirements imposed by other public agencies. On all contracts in which federal funding is used, in the event of a conflict between the provisions of the Fair Contracting Practices Ordinance No. 119601 or any of the rules implementing it, and the requirements of any other applicable federal statute or regulation, the provisions of the federal statute or regulation shall control.
- B. **Title VI:** The Fair Contracting Practices Ordinance No. 119601 does not preclude the charging party from filing a complaint under the auspices of Title VI of the 1964 Civil Rights Act, as amended by the 1987 Civil Rights Restoration Act. These federal laws prohibit discrimination in all contracting efforts by those municipal or private agencies receiving federal funds.

**50-106      Concurrent Remedies.**

General rules of law prevent recovering more than once for the same items of injury and may bind a litigant to the first case that is determined, whatever its outcome. However a complainant is free to seek remedies from any authorized agency or to file a lawsuit in court.

**50-107 Severability.**

If any clause, sentence, paragraph, or part of these rules, or the application thereof to any person or circumstances, shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this chapter, or its application to other persons or circumstances.

**50-108 Choice Of Forum Clauses.**

Notwithstanding a "choice of forum" clause, any contracting practices prohibited by this chapter that may give rise to a discrimination claim under this chapter shall be subject to the City's jurisdiction in reviewing, investigating and resolving such complaint.

**50-109 Definitions.**

Whenever terms defined below are used in the Fair Contracting Practice Ordinance No. 119601, and these rules, the following definitions will apply:

- A. "Business enterprise" means any licensed business organization located in or doing business in the City of Seattle.
- B. "Charging party" means the person aggrieved by an alleged unfair contracting practice or the person making a complaint on another person's behalf, or the Director when the Director files a complaint.
- C. "City department" means any agency, office, board or commission of the City, or any Department employee acting on its behalf, but shall not mean a public corporation chartered under Ordinance 103387, or its successor ordinances, or any contractor, consultant, concessionaire or lessee.
- D. "Commercially significant contract" means any contract for the provision of services (including but not limited to construction services, consulting services or bonding or other financial services) or the sale of goods.
- E. "Contract" means any agreement to perform a service or provide goods that entails a legally binding obligation, where such contract is executed within, or intended to be wholly or partly performed within, the City of Seattle.
- F. "Contracting agency" means any person who for compensation engages in recruiting, procuring, referral or placement of contracts with a contractor.
- G. "Contracting efforts" means any aspect of the entire contracting process undertaken, including those processes taken before the actual contract is executed. Thus all aspects of the offer, acceptance, consideration and

performance phases of a contract are covered by this ordinance and these rules.

- H. "Contractor" means any business enterprise including but not limited to any company, partnership, corporation or other legal entity, excluding real property lessors and lessees, contracting to do business within the City including but not limited to public work contractors, consultant contractors, providers of professional services, service agencies, vendors, and suppliers selling or furnishing materials, equipment, goods or services, but not including governmental agencies other than The City of Seattle.
- I. "Department" means the Seattle Office for Civil Rights (SOCR).
- J. "Director" means the Director of the Office for Civil Rights or her/his designee.
- K. "Discrimination", "discriminate", and/or "discriminatory act" means any act (other than an action taken in accordance with a lawful affirmative action program) or failure to act whether by itself or as part of a practice, the effect of which is to adversely affect or differentiate between or among individuals or groups of individuals by reason of race, color, age, sex, gender identity, marital status, sexual orientation, political ideology, creed, religion, ancestry, national origin; or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification.
- L. "Gender Identity" means a individual's identity, expression or physical characteristics, whether or not traditionally associated with one's biological sex or one's sex at birth, including transsexual, transvestite, and transgendered, and including a individual's attitudes, preferences, beliefs and practices pertaining thereto.
- M. "Marital status" means the presence or absence of a marital relationship and includes the status of married, separated, divorced, engaged, widowed, single or cohabiting.
- N. "Party" shall include the person making a complaint alleging an unfair contracting practice and the person alleged to have committed an unfair contracting practice and the Office for Civil Rights.
- O. "Person" includes one (1) or more individuals licensed to do business or operating/representing a business entity located in or doing business in the City of Seattle, partnerships, associations, organizations, trade or professional associations, corporations, public corporations, cooperatives, legal representatives, trustees, trustees in bankruptcy and receivers, or any group of persons; it includes any owner, lessee, proprietor, manager, agent or employee, whether one (1) or more natural persons, and further includes any department, office, agency or instrumentality of the City.

- P. "Political ideology" means any idea or belief, or coordinated body of ideas or beliefs, relating to the purpose, conduct, organization, function or basis of government and related institutions and activities, whether or not characteristic of any political party or group. This term includes membership in a political party or group and includes conduct, reasonably related to political ideology, which does not interfere with job performance.
- Q. "Respondent" means any person who has been alleged or found to have committed an unfair contracting practice prohibited by this ordinance.
- R. "Sexual orientation" means actual or perceived male or female heterosexuality, bisexuality, homosexuality, and includes an individual's attitudes, preferences, beliefs and practices pertaining thereto.
- S. "Trade Association" means an association of business organizations engaged in similar fields of business which is formed for mutual protection, the interchange of ideas, information and statistics or the maintenance of standards within their industry.

#### **50-110 ADMINISTRATION AND ENFORCEMENT.**

SOCR shall receive, investigate, and issue findings with respect to complaints alleging unfair practices as defined by this ordinance, conciliate and settle the same by agreement, and monitor and enforce any agreements or orders resulting therefrom or from a subsequent hearing thereon under and pursuant to the terms of this ordinance; and shall have such powers and duties in the performance of these functions as are defined in this ordinance and otherwise necessary and proper in the performance of the same and provided for by law. SOCR shall further assist other City agencies and departments upon request in effectuating and promoting the purposes of this ordinance.

#### **50-200 UNFAIR CONTRACTING PRACTICES.**

##### **50-201 Unfair contracting practices are prohibited. It is an unfair contracting practice for any:**

- A. Business enterprise or City department to discriminate against any person with respect to the award or referral of a contract or with respect to the conditions, terms, price, or performance standards, other provisions of a contract;
- B. Contracting agency, or trade association or labor organization to discriminate against any person with respect to membership rights and privileges, admission to or participation in any guidance program, or other business or occupational training program;



- C. Contractor, contracting agency bonding agency trade association or labor organization to print, circulate, or cause to be printed, published, or circulated, any statement, advertisement, or publication relating to contracting or membership, or to use any form of application therefor, which indicates any discrimination unless based upon a bona fide occupational qualification;
- D. Contracting agency or trade association to discriminate against any person with respect to any referral of a contract opportunity or assignment of a particular contract;
- E. Contractor, contract agency, trade association or labor organization to retaliate against any person because that person has opposed an act of discrimination or because that person has made a complaint, testified or assisted in any manner in any investigation, proceeding or hearing initiated under the provisions of this ordinance;

## **50-300 COMPLAINTS.**

### **50-301 Who May File**

An individual complaint alleging an unfair contracting practice in connection with a commercially significant contract may be filed by or on behalf of any person who claims to be aggrieved by an unfair contracting practice. A complaint alleging that a group is being subjected to an unfair contracting practice in connection with a commercially significant contract may be filed by any member of the group, the Director, a state or federal agency concerned with discrimination in contracting whenever such an agency has reason to believe that an unfair contracting practice has been or is being committed, or any trade association which has reason to believe that an unfair contracting practice has been or is being committed against any of its members.

### **50-302 Complaint Format**

A complaint alleging an unfair contracting practice shall be in writing on a form or in a format determined by SOCR, and signed under oath or affirmation by or on behalf of a charging party before the Director, one of SOCR's employees, or any other person authorized to administer oaths, and shall describe the unfair contracting practice complained of and should include a statement of the dates, places and circumstances and the persons responsible for such acts and practices.

### **50-303 Complaint Authentication**

Whenever complaints are made by or on behalf of a person claiming to be aggrieved, the person making the complaint must provide the Director

with the name, address and telephone number of the individual on whose behalf the complaint is made. Thereafter, the Director shall verify the authorization of such complaint by the person on whose behalf the complaint is made and upon the request of such person may keep his or her identity confidential to the extent allowed by law.

**50-304 Minimum Requirements of Complaint**

A complaint shall not be rejected as insufficient because of failure to include all required information so long as it substantially satisfies the informational requirements necessary for processing.

**50-305 Director May File Complaint**

A complaint alleging an unfair contracting practice or pattern of unfair practices may also be filed by the Director whenever the Director has reason to believe that any person has been engaged or is engaging in an unfair contracting practice.

**50-306 Complaint Filing Deadline**

Complaints filed under this ordinance must be filed with SOCR within one hundred eighty (180) days after the occurrence of the alleged unfair contracting practice.

**50-307 Amending Filed Complaints**

The charging party or SOCR may amend a complaint to cure technical defects or omissions; or to clarify and amplify allegations made therein; or to add allegations related to or arising out of the subject matter set forth, or attempted to be set forth, in the original complaint. For jurisdictional purposes, such amendments shall relate back to the date the original complaint was first filed. The charging party may also amend a complaint to include allegations of additional unrelated discriminatory acts and/or retaliation which arose after filing of the original complaint.

The amendment must be filed within one hundred eighty (180) days after the occurrence of the additional discriminatory act and/or retaliation and prior to SOCR's issuance of findings of fact and a determination with respect to the original complaint. Such amendments may be made at any time during the investigation of the original complaint so long as SOCR will have adequate time to investigate such additional allegations and the parties will have adequate time to present SOCR with evidence concerning such allegations before the issuance of findings of fact and a determination.

**50-308 Preliminary Evaluation Of Complaint**

When the allegations of a complaint, if true, would not establish the basis for a reasonable cause determination, a determination of no reasonable cause may be made without further investigation.

**50-309 Notice**

The Director shall cause to be served or mailed by certified mail, return receipt requested, a copy of the complaint on the respondent within twenty (20) days after the filing of the complaint and shall promptly make an investigation thereof.

**50-400 INVESTIGATIONS.**

**50-401 Intent of Investigation**

The investigation shall be directed to ascertain the facts concerning the unfair practice alleged in the complaint, and shall be conducted in an objective and impartial manner.

**50-402 Authority of Director During the Investigation**

The Director shall consider any statement of position or evidence with respect to the allegations of the complaint submitted by the charging party or the respondent. The Director may sign and issue subpoenas requiring the attendance and testimony of witnesses, the production of evidence (including but not limited to books, records, correspondence or documents in the possession or under the control of the person subpoenaed), and access to evidence for the purpose of examination and copying, and conduct discovery procedures which may include interrogatories and oral depositions.

**50-403 Fact Finding Conference**

The Director may require a fact finding conference or participation in another process with the respondent and any of respondent's agents and witnesses and charging party during the investigation in order to define the issues, determine which elements are undisputed, resolve those issues which can be resolved, and afford an opportunity to discuss or negotiate settlement. Parties so desiring may bring their legal counsel or other designated representative.

**50-404 Pre-Determination Settlements**

- A. If, before a determination regarding reasonable cause is made, the charging party and respondent agree upon a settlement and the Director or his or her designee believes the remedy afforded the charging party is appropriate, the Department will draft a Pre-Determination (PDS) agreement.
- B. The charging party and the respondent will sign the PDS agreement. The agreement will be incorporated in an Order of the Director which will state that the parties shall comply with the terms of the PDS agreement.
- C. The Director will require proof of compliance with the terms of the PDS agreement. When such proof is provided the Director, he or she will administratively close the case and so notify the parties.
- D. The Department may investigate any alleged breach of the agreement; if litigation is initiated to enforce the agreement, the City shall be awarded its reasonable attorney's fees and costs incurred in bringing the action.

**50-405 Findings of Fact and Determination of Reasonable Cause or no Reasonable Cause.**

The results of the investigation shall be reduced to written findings of fact and a determination shall be made by the Director that there is or is not reasonable cause for believing that an unfair practice has been or is being committed, which determination shall also be in writing and issued with the written findings of fact. Where a City department is a respondent the Director shall issue such findings and determination only after having submitted proposed findings and determinations to the respondent and charging party for review and comment. With respect to the findings and determination, "issued" shall be defined as signed and dated by the Director.

**50-406 The Findings of Fact and Determination Shall be Furnished Promptly to the Respondent and Charging Party.**

Once the results of the investigation has been reduced to written findings of fact and a determination made by the Director, the findings of fact and determination shall be furnished promptly to the respondent and charging party.

**50-407 Amending Findings of Fact**

Once issued to the parties, the Director's findings of fact, determination and order may not be amended or withdrawn except upon the agreement of the parties, provided, that the Director may correct clerical mistakes or

errors arising from oversight or omission upon a motion from a party or upon the Director's own motion.

**50-408 Breach of Contractual Provisions**

If in the course of an investigation, it becomes apparent that a contractual provision was breached, but that the breach was caused by economic or other non-discriminatory pressures, the complainant will be advised that SOCR will not pursue the matter further and will terminate its investigation. **NOTE:** If the evidence illustrates that discrimination is the cause of the breach of the contractual provision, then the breach will be considered in determining the appropriate damages.

**50-500 TERMINATION OF CASES WITHOUT FINDINGS OF FACT**

**50-501 Withdrawal of Charge**

A charging party may request that his or her charge be withdrawn at any time before determination regarding reasonable cause is made by the Director by giving the Department written notice of his or her request.

**50-502 Director to Inquire into Withdrawal Request**

Upon receipt of the appropriate withdrawal notice, the Director or his or her designee may make inquiries to ascertain whether the charging party gave the notice voluntarily and with an understanding of the consequences. Unless the Director or designee determines that the withdrawal request is coerced or uninformed, SOCR may terminate its action on the charge and notify the charging party and respondent that the charge has been withdrawn.

**50-503 Charging Party May Not Re-File Withdrawn Complaint**

A charging party who withdraws a charge may not file another charge which alleges the same facts and violation as the withdrawn charge.

**50-504 Administrative Closure of a Charge Without Findings of Fact**

- A. The Director may administratively close a charge without making findings of fact and a determination whether there is reasonable cause to believe an unfair practice has occurred when he or she determines administrative closure is appropriate, including, but not limited to, cases where:

- (1) the Director or his or her designee determines that all portions of the charge were not timely filed or that SOCR does not otherwise have jurisdiction;
  - (2) the charging party fails to provide necessary information requested by the Director or his or her designee, fails or refuses to appear or to be available for interviews or conferences as necessary, or otherwise refuses to cooperate with the Director or his or her designee to the extent he or she is unable to resolve the charge, and the charging party has had thirty (30) days notice of the Director's intent to administratively close the charge for failure of the charging party to cooperate;
  - (3) the charging party cannot be located by the Director or by his or her designee, he or she has made reasonable efforts to locate the charging party, and has sent notice to the charging party at his or her last known address of the Director's intent to dismiss the charge, and at least thirty (30) days have elapsed since the notice of the Director's intent to dismiss the charge was sent; or
  - (4) the charging party has refused to accept a respondent's written settlement offer which is specific in its terms and which the Director determines would provide the charging party all relief to which he or she would be entitled pursuant to the Fair Contracting Practices Ordinance No. 119601 if a determination of reasonable cause were made in his or her case and the charging party has been given thirty (30) days notice of the Director's intent to administratively close the charge for refusal of the charging party to accept the offer.
  - (5) a discrimination action has been filed and is being actively litigated in a court which seeks relief on the same facts as are alleged in the charge;
  - (6) a Pre-Determination Settlement agreement has been reached and SOCR has received proof of compliance with the terms of the agreement
- B. The charging party will be notified by the Director or his or her designee that a charge has been administratively closed.
- C. An administrative closure of a case terminates the action of the Director and SOCR on the charge. A charging party may not file another charge that alleges the same facts and violation as the charge in a case which has been administratively closed. The charging party and respondent will be given notice by SOCR that a case has been administratively closed.

## **50-600 FINDINGS AND DETERMINATIONS**

### **50-601 Determination Of No Reasonable Cause.**

If a no reasonable cause determination is made, the charging party shall have the right to file a written request with the Director asking for reconsideration of the finding. This written request must be submitted to the Director within 30 days of the issuance of the Director's findings. The Director shall respond in writing within a reasonable time by granting or denying the request.

### **50-602 Determination of Reasonable Cause in Cases Involving All Respondents Except City Departments - Conciliation and Settlement.**

- A. In all cases except a case in which a City department is the respondent, if a determination is made that reasonable cause exists to believe that an unfair practice has occurred, the Director shall endeavor to eliminate the unfair practice by conference, conciliation, and persuasion.
- B. Conditions of settlement may include (but are not limited to) the elimination of the unfair contracting practice, hiring, reinstatement, lost profits, attorney's fees, admittance or restoration to membership in a trade association, admittance to participation in a training, or such other action which will effectuate the purposes of this ordinance, including action which could be ordered by a court, except that damages for humiliation and mental suffering shall not exceed Ten Thousand Dollars (\$10,000.00).
- C. Any settlement agreement shall be reduced to writing and signed by the charging party, the respondent and the Director. An order shall then be entered by the Director setting forth the terms of the agreement. Copies of such order shall be delivered to all affected parties.
- D. Failure to Reach An Agreement: In case of failure to reach an agreement and/or conciliation and upon a written finding to that effect furnished to the charging party and respondent, except a case in which a City department is a respondent, the Director shall promptly cause to be delivered the entire investigation file, including the complaint and any and all findings made, to the City Attorney for further proceedings and hearing under this ordinance pursuant to SOCR Rules 50-701.

**Determination Of Reasonable Cause Of Cases Involving City Departments As Respondents – Conciliation Or Referral To Hearing Examiner.**

In all cases in which a City department is a respondent:

- A. A determination of reasonable cause by the Director shall be deemed a finding that an unfair contracting practice has been committed by respondent and is dispositive of this issue for all future proceedings under this ordinance.
- B. Within sixty (60) days of the issuance of a determination of reasonable cause, the Director shall confer with the parties and determine an appropriate remedy, which may include (but is not limited to) hiring, reinstatement, lost profits, attorney's fees, admittance or restoration to membership in a trade association, admittance to participation in a training, or such other action as will effectuate the purposes of this ordinance, including action which could be ordered by a court, except that damages for humiliation and mental suffering shall not exceed Ten Thousand Dollars (\$10,000.00). Such remedy shall be reduced to writing in an order of the Director.
- C. The charging party must sign a release in the form and manner requested by SOCR, releasing the City from further liability for acts giving rise to the complaint in order to obtain the benefits of the remedy provided under this section and before payment can be made. Without such release, the Director's order with respect to the charging party's individual relief shall have no force and effect. In such event the Director shall notify the parties involved in writing.
- D. In all cases where the remedy determined by the Director includes a monetary payment which exceeds the sum of Ten Thousand Dollars (\$10,000.00), the complaint or claim, the Director's determination, order, the charging party's signed release and such further documentation as may be required shall be presented to the City Council for passage by separate ordinance. If the City Council fails or refuses to appropriate the amount ordered by the Director within ninety (90) days, the Director shall certify the case to the Hearing Examiner for a hearing to determine the appropriate monetary relief in the case which determination shall be final and binding upon the City.
- E. Where the Director's order includes a monetary payment of Ten Thousand Dollars (\$10,000.00) or less, such payment shall be made under the authority and in the form and manner otherwise provided for by law for payment of such claims



## **50-700 FORWARDING COMPLAINTS TO CITY ATTORNEY FOR PROSECUTION BEFORE THE HEARING EXAMINER.**

### **50-701 Submission of Complaint to the City Attorney**

Following submission of the investigation file from the Director in cases involving all respondents under SOCR Rules 50-602, the City Attorney shall prepare a complaint against such respondent relating to the complaint and facts discovered during the investigation thereof and prosecute the same in the name and on behalf of SOCR and the City at a hearing before the Hearing Examiner and appear for and represent the interests of SOCR and the City at all subsequent proceedings; provided, if the City Attorney determines that there is no legal basis for a complaint to be filed or for proceedings to continue, a statement of the reasons therefor shall be filed with SOCR, charging party and the respondent.

### **50-702 Service of Complaint**

The complaint shall be served on respondent in the usual manner provided by law for service of complaints and filed with the Seattle Hearing Examiner. A copy of such complaint shall be furnished to the charging party.

### **50-703 Deadline to respond to Complaint**

Within twenty (20) days of the service of such complaint upon it, the respondent shall file its answer with the Hearing Examiner and serve a copy of the same on the City Attorney.

### **50-704 Date of Hearing and Notice**

Upon the filing of the complaint, the Hearing Examiner shall promptly establish a date for the hearing and give notice thereof to the City Attorney and respondent, and shall commence a public hearing on the complaint, no earlier than ninety (90) days nor later than one hundred twenty (120) days from the filing of the complaint, unless otherwise ordered by the Hearing Examiner.

### **50-705 Amendment of Filed Complaint**

Amending a complaint after it has been filed with the Hearing Examiner requires the permission of the Hearing Examiner. Permission shall only be granted when justice will be served and all parties are allowed time to prepare their case with respect to additional or expanded complaints, which they did not and could not have reasonably foreseen would be in issue at the hearing.

**50-706      Conduct of Hearing**

The hearing shall be conducted by a Hearing Examiner from the Office of Hearing Examiner, or a hearing examiner pro tempore appointed by the Hearing Examiner. Such hearings shall be conducted in accordance with written rules and procedures consistent with this ordinance and the Administrative Code of the City (Ordinance 102228).

**50-707      Decision and Order by the Hearing Examiner**

- A. Within thirty (30) days after conclusion of the hearing, the Hearing Examiner presiding at the hearing shall prepare a written decision and order. The final decision shall be filed as a public record with the City Clerk, and copies thereof mailed to each party of record and to SOCR.
- B. Such decision shall contain a brief summary of the evidence considered, findings of fact, conclusions of law upon which the decision is based, and an order detailing the relief deemed appropriate, together with a brief statement of the reasons therefor.
- C. In the event the Hearing Examiner determines that a respondent has committed an unfair contracting practice under this ordinance, the Hearing Examiner may order the respondent to take such affirmative action or provide for such relief as is deemed necessary to correct the practice, effectuate the purpose of this ordinance, and secure compliance therewith, including but not limited to hiring, reinstatement, lost profits, attorney's fees, admittance or restoration to membership in a trade association, admittance to participation in a training, or such other action which will effectuate the purposes of this ordinance, including action which could be ordered by a court, except that damages for humiliation and mental suffering shall not exceed Ten Thousand Dollars (\$10,000.00). Lost profits shall not accrue from a date more than two (2) years prior to the initial filing of the complaint. The Hearing Examiner may also disqualify the respondent from participating in contracts with the City for a period of up to five (5) years.
- D. Respondent shall comply with the provisions of any order affording relief and shall furnish proof of compliance to the Department as specified in the order. In the event respondent refuses or fails to comply with the order, the Director shall notify the City Attorney of the same and the City Attorney shall invoke the aid of the appropriate court to secure enforcement or compliance with the order.

## **50-800 Miscellaneous Provisions.**

### **50-801 Violation-Penalty**

It is unlawful for any person to willfully engage in an unfair practice under this ordinance or willfully resist, prevent, impede or interfere with the Director or Hearing Examiner in the performance of their duties under this ordinance, or to fail, refuse, or neglect to comply with any lawful order of the Director or Hearing Examiner. Conduct made unlawful by this section constitutes a violation subject to the provisions of Chapter 12A.01 and Chapter 12A.02 of the Seattle Criminal Code and any person convicted thereof may be punished by a civil fine or forfeiture not to exceed Five Hundred Dollars (\$500.00).

### **50-802 Requirement to Comply**

The City shall include the requirement to comply with this ordinance and these rules, as amended, in all contracts and agreements with recipients of grants and other funds through or from the City and with organizations which use City buildings, facilities or property or which use property for which the City is responsible for capital improvements. The contract clause requiring compliance with the Fair Contracting Practices Ordinance, Ordinance No. 119601 shall be in substantially the following form:

***"Each party is required to comply with the Fair Contracting Practices Ordinance of the City of Seattle (Ordinance 119601), as amended. Conduct made unlawful by that ordinance constitutes a breach of contract. Engaging in an unfair contracting practice may also result in the imposition of a civil fine or forfeiture under the Seattle Criminal Code as well as various civil remedies."***

## **50-900 ENFORCEMENT BY PRIVATE PERSONS**

### **50-901 Private Civil Action**

Any person who claims to have been injured by an unfair contracting practice may commence a civil action in a court of competent jurisdiction, not later than three years after the occurrence of the alleged unfair contracting practice or ninety (90) days after the issuance of a determination of reasonable cause by the Director, whichever occurs last, to obtain appropriate relief with respect to such unfair contracting practice.

**Civil Action Precluded Once Settlement or Conciliation Agreement is Obtained.**

A civil action may be filed under this section whether or not an administrative complaint has been filed under these rules and without regard to the status of such complaint, but if SOCR has obtained a pre-finding or post-finding settlement or conciliation agreement with the consent of the charging party, no civil action may be filed under this section with respect to the alleged unfair contracting practice which forms the basis for such complaint except for the purpose of enforcing the terms of the agreement. To preclude such filing, the charging party must be provided with written notice that consent to a pre-finding or post-finding settlement or conciliation agreement will terminate the charging party's right to file a civil action under this section.

- A. Upon the filing of a civil action involving the same claim or arising from the same facts and circumstances, whether under the Fair Contracting Practices ordinance (No. 119601), or similar law, a complaint of an unfair contracting practice may be administratively closed by the Director.
- B. In the event that a court dismisses a private cause of action on grounds that would not preclude pursuit of a complaint under this ordinance, the charging party may request, within 90 days of the entry of the Court's order of dismissal, that SOCR reopen a previously filed complaint. Upon such request, the Director may reopen a case that was administratively closed upon the filing of a civil action. If SOCR closes a case based on a "no reasonable cause" finding, the case shall not be reopened.
- C. No complainant or aggrieved person may secure relief from more than one governmental agency, instrumentality or tribunal for the same harm or injury.
- D. Where the complainant or aggrieved person elects to pursue simultaneous claims in more than one forum, the factual and legal determinations issued by the first tribunal to rule on the claims may, under the doctrines of "res judicata" or "collateral estoppel," be binding on all or portions of the claims pending before other tribunals.
- E. No civil action may be commenced under this section with respect to an alleged unfair contracting practice which forms the basis of a complaint if a hearing on the record has been commenced by the City of Seattle Office of the Hearing Examiner. To preclude such filing, a charging party must be provided with written notice at least 30 days prior to the commencement of a hearing before the City of Seattle Office of the Hearing Examiner that the commencement of such a hearing will terminate the charging party's right to file a civil action.

- F. In a civil action under this section, if the court, or jury, finds that an unfair contracting practice has occurred, the court may grant such relief as may be awarded by the Hearing Examiner under this ordinance or is authorized by the Washington Law Against Discrimination, Ch. 49.60 RCW, as amended. Damages awarded under this section for humiliation and mental suffering are not subject to the limitation of SOCR Rules 50-707.
  
- G. Upon timely application, the City Attorney may intervene in such civil action, if the City Attorney certifies that the case is of general public importance, and may obtain such relief as would be available in an action brought under SOCR Rules 50-701 . Such intervention shall not be permitted in an action in which the City is a defendant.

## **AMENDMENTS TO THE FAIR CONTRACTING PRACTICES ORDINANCE**

### **Changes regarding gender identity**

- 1) Page 1, line 9, ADD “gender identity,” after “sexual orientation,”
- 2) Page 3, line 5, ADD “gender identity,” after “sexual orientation,”
- 3) Page 3, line 10, ADD:

“Gender identity” means a person’s identity, expression, or physical characteristics, whether or not traditionally associated with one’s biological sex or one’s sex at birth, including transsexual, transvestite, and transgendered, and including a person’s attitudes, preferences, beliefs, and practices pertaining thereto.

- 4) Page 4, line 4, DELETE the words “transsexuality, or transvestitism”

### **Change to delete outdated SMC reference**

- 5) Page 13, line 3, DELETE “Chapter 12A.01 and”

### **Change to realphabetize definitions (This may not really *need* amending)**

- 6) MOVE definition of “Contracting Agency from page 3, lines 8-9 to page 2, line 17



# City of Seattle

Paul Schell, Mayor

Office of the Mayor

## MEMORANDUM

**DATE:** July 28, 1999

**TO:** Honorable Sue Donaldson, President  
Seattle City Council

**FROM:**  Paul Schell, Mayor

**SUBJECT:** ORDINANCES to implement the "Contracting Equity Framework"

I am pleased to submit the three attached ordinances for consideration by the Seattle City Council. The ordinances have been developed by the City of Seattle in cooperation with our regional partners: King County, the Port of Seattle, the Seattle School District, and the State of Washington.

Initiative 200 has limited the tools available to governments to address the effects of race and gender discrimination, and the regional effort has focused on the desire to take meaningful action while complying with the law. The "Contracting Equity Framework" has been developed by the regional partners within the new legal environment defined by Initiative 200, as a way of fulfilling the regional commitment to equity in contracting, and enhancing the vitality of our diverse communities.

The Contracting Equity Framework is comprised of four major sectors:

- **Anti-discrimination:** Apply anti-discrimination models from housing and employment to public and private contracting practices
- **Priority in Contracting:** Develop strategies to address social equity objectives in procurement of public works, consultant contracting, and goods and services
- **Contracting Practices:** Expand contracting practices within our public agencies
- **Business Development:** Develop strategies for direct assistance to those participating in the new "Boost" program

As the first phase of implementing the regional "Contracting Equity Framework," each participating jurisdiction will introduce legislation or resolutions to its governing body as appropriate. The City of Seattle's proposed legislation is as follows:

(1) The "Fair Contracting Practices" ordinance would prohibit discrimination in contracting by business entities doing business in the City of Seattle. Modeled after traditional anti-discrimination laws in housing and employment, the ordinance would apply to private and public contracting, and would establish monetary penalties for violations.

(2) The "Boost" ordinance would direct the Executive Services Department (ESD) to create a new program to promote the use of small, economically-disadvantaged businesses in City contracting. Eligible contractors would be given a short-term advantage in competing for public projects.

(3) The "Race and Gender Equity" ordinance would direct City departments to use available tools to promote race and gender equity in contracting.

I would like to applaud the City Council's involvement over the past months in helping us to develop this package. I hope you will be as pleased as I am with the City's leadership in designing the Contracting Equity Framework, and that you will support this new legislation. Your continued assistance will also be critical as we finalize the rules and operational procedures necessary for implementation. Details of each of the three ordinances are provided in the respective transmittal letters. For further assistance, please contact Rod Brandon, Director of ESD's Contracting Services Division, at 684-0324.

Thank you.





# City of Seattle

Paul Schell, Mayor

Seattle Office for Civil Rights

Germaine W. Covington, Director

## MEMORANDUM

**Date:** July 28, 1999

**To:** Councilmember Martha Choe  
Chair, Finance and Budget Committee  
Seattle City Council

**From:** Germaine Covington, Director *GWC*  
Seattle Office for Civil Rights

**Subject:** Ordinance to prohibit discrimination in contracting

I am pleased to submit "The Fair Contracting Practices" ordinance for consideration by Seattle City Council, which would prohibit discrimination in contracting and provide remedies for victims of discrimination. "The Fair Contracting Practices" ordinance is part of a legislative package sponsored by Mayor Paul Schell promoting contracting opportunities for disadvantaged businesses.

The "Fair Contracting Practices" ordinance will prohibit discrimination in contracting by business entities doing business in the City of Seattle. Modeled after traditional anti-discrimination laws in housing and employment, the ordinance applies to private and public contracting and establishes monetary penalties for violations.

The ordinance protects any person from practices of discrimination in public or private contracting on the basis of race, color, sex, marital status, sexual orientation, political ideology, age, creed, religion, ancestry, national origin, or the presence of any sensory, mental or physical disability. The ordinance applies to the City when acting as contractor and to other contractors, subcontractors, suppliers, material suppliers, and bonding agencies, contract agencies and other entities doing business in the City of Seattle.

Seattle Office for Civil Rights (SOCR) will serve as the City's administrative and enforcement agency, and investigate and issue findings with respect to charges alleging discriminatory contracting practices, conciliate and settle disputes between charging parties and respondents, and monitor and enforce any agreements resulting from discrimination claims. SOCR anticipates an increase in the volume of its caseload, and Executive Services Department has agreed to

provide funding for an additional FTE in 1999 for an SOCR investigator. SOCR is proposing that an additional FTE be added to SOCR's 2000 budget for enforcement.

The ordinance authorizes and directs SOCR to promulgate rules to effectuate the ordinance. Because, to the best of our knowledge, "The Fair Contracting Practices" ordinance is groundbreaking in both the areas of anti-discrimination law and contracting, developing rules will comprise a significant body of work for our office in the coming months.

The ordinance stipulates a private right of action. Anyone who claims to have been injured by a discriminatory contracting practice may file a civil action in a court of competent jurisdiction, whether or not an administrative charge had been filed with our office.

I believe "The Fair Contracting Practices" ordinance reflects City Council's commitment to eradicating discrimination and furthering the social justice goals of the City of Seattle. I hope you will support the legislation. Please feel free to call on me anytime if I can be of further assistance.

Thank you.

## Fiscal Note Template

Each piece of legislation that is financial in nature will be accompanied by a fiscal note. The fiscal note should be drafted by department staff and will identify operating, capital, revenue, and FTE impacts of the legislation.

|                            |   |   |
|----------------------------|---|---|
| <b>Department:</b><br>SOCR | <b>Contact Person/Phone:</b><br>Germaine W. Covington | <b>CBO Analyst/Phone:</b><br>Barbara Gangwer/5-0768 |
|----------------------------|---|---|

**Legislation Title:** An ordinance to be known as the Fair Contracting Practices Ordinance and prohibiting discrimination in contracting; providing remedies for victims of such discrimination, and creating a new position and expenditure allowance in the 1999 Seattle Office for Civil Rights budget.

**Summary of the Legislation:** This legislation will prohibit discrimination in contracting by business entities doing business in the City of Seattle.

**Background (Include justification for the legislation and funding history, if applicable):** The Fair Contracting Practices ordinance is part of a legislative package sponsored by Mayor Paul Schell promoting contracting opportunities for disadvantaged businesses. This legislation is modeled after traditional anti-discrimination laws in housing and employment, the ordinance applies to private and public contracting and establishes monetary penalties for violations.

**Sustainability Issues (related to grant awards):** SOCR included a request for position and funding in their 2000 budget submittal to CBO.

***Estimated Expenditure Impacts:***

| FUND  | 1998 | 1999 | 2000 |
|-------|------|------|------|
| N/A   |      |      |      |
|       |      |      |      |
| TOTAL |      |      |      |

One-time \$ \_\_\_\_\_

On-going \$ \_\_\_\_\_

**Estimated Revenue Impacts:**

| FUND  | 1998 | 1999 | 2000 |
|-------|------|------|------|
|       |      |      |      |
|       |      |      |      |
|       |      |      |      |
| TOTAL |      |      |      |

One-time \$ 0

On-going \$ 0

**Estimated FTE Impacts:**

| FUND  | 1998 | 1999 | 2000 |
|-------|------|------|------|
| SOCR  |      | 1    | 0    |
|       |      |      |      |
|       |      |      |      |
| TOTAL |      |      |      |

# Full Time 1 # Part Time 0

# TES 0

**Do positions sunset in the future? If so, when?**

Yes, on December 31, 1999.

**Other Issues (including long-term implications of the legislation):**

This position will be paid for by funds from the Executive Services Department for the remainder of 1999. SOCR has a budget request in for funds to cover the position and funding in the year 2000.



1 solely upon their performance, qualifications, or ability to perform in accordance with the terms of a  
2 contract or for other nondiscriminatory reasons.

3 Section 2. Definitions. When used in this ordinance, unless the context otherwise requires:

4 "Business enterprise" means any licensed business organization located in or doing business in  
5 the City of Seattle.

6 "Charging party" means the person aggrieved by an alleged unfair contracting practice or the  
7 person making a charge on another person's behalf, or the Director when the Director files a charge.

8 "City department" means any agency, office, board or commission of the City, or any Department  
9 employee acting on its behalf, but shall not mean a public corporation chartered under Ordinance  
10 103387, or its successor ordinances, or any contractor, consultant, concessionaire or lessee.

11 "Commercially significant contract" means any contract for the provision of services (including  
12 but not limited to construction services, consulting services or bonding or other financial services) or the  
13 sale of goods that exceeds the amount established for such contracts by the Director.

14 "Contract" means any agreement to perform a service or provide goods that entails a legally  
15 binding obligation, where such contract is executed within, or intended to be wholly or partly performed  
16 within, the City of Seattle.

17 "Contractor" means any business enterprise including but not limited to any company,  
18 partnership, corporation or other legal entity, excluding real property lessors and lessees, contracting to  
19 do business within the City including but not limited to public work contractors, consultant contractors,  
20 providers of professional services, service agencies, vendors, and suppliers selling or furnishing  
21 materials, equipment, goods or services, but not including governmental agencies other than The City of  
22 Seattle.

23 "Department" means the Office for Civil Rights.  
24

1 "Director" means the Director of the Office for Civil Rights.

2 "Discrimination," "discriminate," and/or "discriminatory act" means any act (other than an action  
3 taken in accordance with a lawful affirmative action program) or failure to act whether by itself or as  
4 part of a practice, the effect of which is to adversely affect or differentiate between or among individuals  
5 or groups of individuals by reason of race, color, age, sex, marital status, sexual orientation, political  
6 ideology, creed, religion, ancestry, national origin; or the presence of any sensory, mental or physical  
7 handicap, unless based upon a bona fide occupational qualification.

8 "Contracting agency" means any person who for compensation engages in recruiting, procuring,  
9 referral or placement of contracts with a contractor.

10 "Marital status" means the presence or absence of a marital relationship and includes the status of  
11 married, separated, divorced, engaged, widowed, single or cohabitating.

12 "Party" shall include the person making a charge alleging an unfair contracting practice and the  
13 person alleged to have committed an unfair contracting practice and the Office for Civil Rights.

14 "Person" includes one (1) or more individuals, partnerships, associations, organizations, trade or  
15 professional associations, corporations, public corporations, cooperatives, legal representatives, trustees,  
16 trustees in bankruptcy and receivers, or any group of persons; it includes any owner, lessee, proprietor,  
17 manager, agent or employee, whether one (1) or more natural persons, and further includes any  
18 department, office, agency or instrumentality of the City.

19 "Political ideology" means any idea or belief, or coordinated body of ideas or beliefs, relating to  
20 the purpose, conduct, organization, function or basis of government and related institutions and  
21 activities, whether or not characteristic of any political party or group. This term includes membership in  
22 a political party or group and includes conduct, reasonably related to political ideology, which does not  
23 interfere with job performance.

1 "Respondent" means any person who has been alleged or found to have committed an unfair  
2 contracting practice prohibited by this ordinance.

3 "Sexual orientation" means actual or perceived male or female heterosexuality, bisexuality,  
4 homosexuality, transsexuality, or transvestism and includes a person's attitudes, preferences, beliefs and  
5 practices pertaining thereto.

6 "Trade Association" means an association of business organizations engaged in similar fields of  
7 business which is formed for mutual protection, the interchange of ideas, information and statistics or  
8 the maintenance of standards within their industry.

9 Section 3. Unfair contracting practices prohibited. It is an unfair contracting practice for any:

10 A. business enterprise or City department to discriminate against any person with respect to the  
11 award or referral of a contract or with respect to the conditions, terms, price, or performance standards,  
12 other provisions of a contract;

13 B. contracting agency, or trade association or labor organization to discriminate against any  
14 person with respect to membership rights and privileges, admission to or participation in any guidance  
15 program, or other business or occupational training program;

16 C. contractor, contracting agency bonding agency trade association or labor organization to print,  
17 circulate, or cause to be printed, published, or circulated, any statement, advertisement, or publication  
18 relating to contracting or membership, or to use any form of application therefor, which indicates any  
19 discrimination unless based upon a bona fide occupational qualification;

20 D. contracting agency or trade association to discriminate against any person with respect to any  
21 referral of a contract opportunity or assignment of a particular contract;

22 E. contractor, contract agency, trade association or labor organization to retaliate against any  
23 person because that person has opposed an act of discrimination or because that person has made a  
24



1 charge, testified or assisted in any manner in any investigation, proceeding or hearing initiated under the  
2 provisions of this ordinance;

3 Section 4. Administration and Enforcement. The Office for Civil Rights shall receive,  
4 investigate, and issue findings with respect to charges alleging unfair practices as defined by this  
5 ordinance, conciliate and settle the same by agreement, and monitor and enforce any agreements or  
6 orders resulting therefrom or from a subsequent hearing thereon under and pursuant to the terms of this  
7 ordinance; and shall have such powers and duties in the performance of these functions as are defined in  
8 this ordinance and otherwise necessary and proper in the performance of the same and provided for by  
9 law. The Department shall further assist other City agencies and departments upon request in  
10 effectuating and promoting the purposes of this ordinance.

11 The Director is authorized and directed to promulgate rules consistent with this ordinance.

12 Section 5. Filing charges.

13 A. An individual charge alleging an unfair contracting practice in connection with a  
14 commercially significant contract may be filed by or on behalf of any person who claims to be aggrieved  
15 by an unfair contracting practice. A charge alleging that a group is being subjected to an unfair  
16 contracting practice in connection with a commercially significant contract may be filed by any member  
17 of the group, the Director, a state or federal agency concerned with discrimination in contracting  
18 whenever such an agency has reason to believe that an unfair contracting practice has been or is being  
19 committed, or any trade association which has reason to believe that an unfair contracting practice has  
20 been or is being committed against any of its members.

21 B. A charge alleging an unfair contracting practice shall be in writing on a form or in a format  
22 determined by the Department, and signed under oath or affirmation by or on behalf of a charging party  
23 before the Director, one of the Department's employees, or any other person authorized to administer  
24

1 oaths, and shall describe the unfair contracting practice complained of and should include a statement of  
2 the dates, places and circumstances and the persons responsible for such acts and practices.

3 C. Whenever charges are made by or on behalf of a person claiming to be aggrieved, the person  
4 making the charge must provide the Director with the name, address and telephone number of the  
5 individual on whose behalf the charge is made. Thereafter, the Director shall verify the authorization of  
6 such charge by the person on whose behalf the charge is made and upon the request of such person may  
7 keep his or her identity confidential to the extent allowed by law.

8 D. A charge shall not be rejected as insufficient because of failure to include all required  
9 information so long as it substantially satisfies the informational requirements necessary for processing.

10 E. A charge alleging an unfair contracting practice or pattern of unfair practices may also be  
11 filed by the Director whenever the Director has reason to believe that any person has been engaged or is  
12 engaging in an unfair contracting practice.

13 Section 6. Charge-Time for filing. Charges filed under this ordinance must be filed with the  
14 Department within one hundred eighty (180) days after the occurrence of the alleged unfair contracting  
15 practice.

16 Section 7. Charge-Amendments. The charging party or the Department may amend a charge to  
17 cure technical defects or omissions; or to clarify and amplify allegations made therein; or to add  
18 allegations related to or arising out of the subject matter set forth, or attempted to be set forth, in the  
19 original charge. For jurisdictional purposes, such amendments shall relate back to the date the original  
20 charge was first filed. The charging party may also amend a charge to include allegations of additional  
21 unrelated discriminatory acts and/or retaliation which arose after filing of the original charge. The  
22 amendment must be filed within one hundred eighty (180) days after the occurrence of the additional  
23 discriminatory act and/or retaliation and prior to the Department's issuance of findings of fact and a  
24

1 determination with respect to the original charge. Such amendments may be made at any time during the  
2 investigation of the original charge so long as the Department will have adequate time to investigate  
3 such additional allegations and the parties will have adequate time to present the Department with  
4 evidence concerning such allegations before the issuance of findings of fact and a determination.

5 Section 8. Charge-Notice and investigation.

6 A. The Director shall cause to be served or mailed by certified mail, return receipt requested, a  
7 copy of the charge on the respondent within twenty (20) days after the filing of the charge and shall  
8 promptly make an investigation thereof.

9 B. The investigation shall be directed to ascertain the facts concerning the unfair practice alleged  
10 in the charge, and shall be conducted in an objective and impartial manner.

11 C. During the investigation the Director shall consider any statement of position or evidence  
12 with respect to the allegations of the charge which the charging party or the respondent wishes to submit.  
13 The Director shall have authority to sign and issue subpoenas requiring the attendance and testimony of  
14 witnesses, the production of evidence including but not limited to books, records, correspondence or  
15 documents in the possession or under the control of the person subpoenaed, and access to evidence for  
16 the purpose of examination and copying, and conduct discovery procedures which may include the  
17 taking of interrogatories and oral depositions.

18 D. The Director may require a fact finding conference or participation in another process with  
19 the respondent and any of respondent's agents and witnesses and charging party during the investigation  
20 in order to define the issues, determine which elements are undisputed, resolve those issues which can be  
21 resolved, and afford an opportunity to discuss or negotiate settlement. Parties may have their legal  
22 counsel present if desired.

23 Section 9. Findings of fact and determination of reasonable cause or no reasonable cause.  
24

1           A. The results of the investigation shall be reduced to written findings of fact and a  
2 determination shall be made by the Director that there is or is not reasonable cause for believing that an  
3 unfair practice has been or is being committed, which determination shall also be in writing and issued  
4 with the written findings of fact. Where a City department is a respondent the Director shall issue such  
5 findings and determination only after having submitted proposed findings and determinations to the  
6 respondent and charging party for review and comment. With respect to the findings and determination,  
7 "issued" shall be defined as signed and dated by the Director.

8           B. The findings of fact and determination shall be furnished promptly to the respondent and  
9 charging party.

10           C. Once issued to the parties, the Director's findings of fact, determination and order may not be  
11 amended or withdrawn except upon the agreement of the parties, provided, that the Director may correct  
12 clerical mistakes or errors arising from oversight or omission upon a motion from a party or upon the  
13 Director's own motion.

14           Section 10. Determination of no reasonable cause. If a determination is made that there is no  
15 reasonable cause for believing an unfair contracting practice under this ordinance has been committed,  
16 the charging party shall have the right to file a written request with the Director asking for  
17 reconsideration of the finding. The Director shall respond in writing within a reasonable time by granting  
18 or denying the request.

19           Section 11. Determination of reasonable cause-Conciliation and settlement of cases involving all  
20 respondents except City departments.

21           A. In all cases except a case in which a City department is the respondent, if a determination is  
22 made that reasonable cause exists to believe that an unfair practice has occurred, the Director shall  
23 endeavor to eliminate the unfair practice by conference, conciliation, and persuasion. Conditions of  
24

1 settlement may include (but are not limited to) the elimination of the unfair contracting practice, hiring,  
2 reinstatement, lost profits, attorney's fees, admittance or restoration to membership in a trade association,  
3 admittance to participation in a training, or such other action which will effectuate the purposes of this  
4 ordinance, including action which could be ordered by a court, except that damages for humiliation and  
5 mental suffering shall not exceed Ten Thousand Dollars (\$10,000.00). Any settlement agreement shall  
6 be reduced to writing and signed by the Director and the respondent. An order shall then be entered by  
7 the Director setting forth the terms of the agreement. Copies of such order shall be delivered to all  
8 affected parties.

9 B. In case of failure to reach an agreement and of conciliation and upon a written finding to that  
10 effect furnished to the charging party and respondent, except a case in which a City department is a  
11 respondent, the Director shall promptly cause to be delivered the entire investigatory file, including the  
12 charge and any and all findings made, to the City Attorney for further proceedings and hearing under this  
13 ordinance pursuant to Section 13.

14 Section 12. Determinations of reasonable cause - Conciliation, settlement and conclusion of  
15 cases involving City departments as respondents.

16 In all cases in which a City department is a respondent:

17 A. A determination of reasonable cause by the Director shall be deemed a finding that an unfair  
18 contracting practice has been committed by respondent and is dispositive of this issue for all future  
19 proceedings under this ordinance.

20 B. Within sixty (60) days of a determination of reasonable cause, the Director shall confer with  
21 the parties and determine an appropriate remedy, which remedy may include (but is not limited to)  
22 hiring, reinstatement, lost profits, attorney's fees, admittance or restoration to membership in a trade  
23 association, admittance to participation in a training, or such other action as will effectuate the purposes  
24

1 of this ordinance, including action which could be ordered by a court, except that damages for  
2 humiliation and mental suffering shall not exceed Ten Thousand Dollars (\$10,000.00). Such remedy  
3 shall be reduced to writing in an order of the Director.

4 C. The charging party must sign a release in the form and manner requested by the Department,  
5 releasing the City from further liability for acts giving rise to the charge in order to obtain the benefits of  
6 the remedy provided under this section and before payment can be made. Without such release, the  
7 Director's order with respect to the charging party's individual relief shall have no force and effect. In  
8 such event the Director shall notify the parties involved in writing.

9 D. In all cases where the remedy determined by the Director includes a monetary payment which  
10 exceeds the sum of Ten Thousand Dollars (\$10,000.00), the charge or claim, the Director's  
11 determination, order, the charging party's signed release and such further documentation as may be  
12 required shall be presented to the City Council for passage by separate ordinance. If the City Council  
13 fails or refuses to appropriate the amount ordered by the Director within ninety (90) days, the Director  
14 shall certify the case to the Hearing Examiner for a hearing to determine the appropriate monetary relief  
15 in the case which determination shall be final and binding upon the City.

16 E. Where the Director's order includes a monetary payment of Ten Thousand Dollars  
17 (\$10,000.00) or less, such payment shall be made under the authority and in the form and manner  
18 otherwise provided for by law for payment of such claims.

19 Section 13. Charge and hearing of cases.

20 A. Following submission of the investigatory file from the Director in cases involving all  
21 respondents under Section 11, the City Attorney shall prepare a complaint against such respondent  
22 relating to the charge and facts discovered during the investigation thereof and prosecute the same in the  
23 name and on behalf of the Department and the City at a hearing before the Hearing Examiner and appear  
24

1 for and represent the interests of the Department and the City at all subsequent proceedings; provided, if  
2 the City Attorney determines that there is no legal basis for a complaint to be filed or for proceedings to  
3 continue, a statement of the reasons therefor shall be filed with the Department, charging party and the  
4 respondent.

5 B. The complaint shall be served on respondent in the usual manner provided by law for service  
6 of complaints and filed with the Seattle Hearing Examiner. A copy of such complaint shall be furnished  
7 to the charging party.

8 C. Within twenty (20) days of the service of such complaint upon it, the respondent shall file its  
9 answer with the Hearing Examiner and serve a copy of the same on the City Attorney.

10 D. Upon the filing of the complaint, the Hearing Examiner shall promptly establish a date for the  
11 hearing of such complaint and give notice thereof to the City Attorney and respondent, and shall  
12 thereafter hold a public hearing on the complaint, which hearing shall commence no earlier than ninety  
13 (90) days nor later than one hundred twenty (120) days from the filing of the complaint, unless otherwise  
14 ordered by the Hearing Examiner.

15 E. After the filing of a complaint with the Hearing Examiner, it may be amended only with the  
16 permission of the Hearing Examiner, which permission shall be granted when justice will be served  
17 thereby and all parties are allowed time to prepare their case with respect to additional or expanded  
18 charges which they did not and could not have reasonably foreseen would be in issue at the hearing.

19 F. The hearing shall be conducted by a Hearing Examiner from the Office of Hearing Examiner,  
20 or a hearing examiner pro tempore appointed by the Hearing Examiner. Such hearings shall be  
21 conducted in accordance with written rules and procedures consistent with this ordinance and the  
22 Administrative Code of the City (Ordinance 102228).

23 Section 14. Decision and order.  
24

1           A. Within thirty (30) days after conclusion of the hearing, the Hearing Examiner presiding at the  
2 hearing shall prepare a written decision and order. The final decision shall be filed as a public record  
3 with the City Clerk, and copies thereof mailed to each party of record and to the Department.

4           B. Such decision shall contain a brief summary of the evidence considered and shall contain  
5 findings of fact, conclusions of law upon which the decision is based, and an order detailing the relief  
6 deemed appropriate, together with a brief statement of the reasons therefor.

7           C. In the event the Hearing Examiner determines that a respondent has committed an unfair  
8 contracting practice under this ordinance, the Hearing Examiner may order the respondent to take such  
9 affirmative action or provide for such relief as is deemed necessary to correct the practice, effectuate the  
10 purpose of this ordinance, and secure compliance therewith, including but not limited to hiring,  
11 reinstatement, lost profits, attorney's fees, admittance or restoration to membership in a trade association,  
12 admittance to participation in a training, or such other action which will effectuate the purposes of this  
13 ordinance, including action which could be ordered by a court, except that damages for humiliation and  
14 mental suffering shall not exceed Ten Thousand Dollars (\$10,000.00). Lost profits shall not accrue from  
15 a date more than two (2) years prior to the initial filing of the charge. The Hearing Examiner may also  
16 disqualify the respondent from participating in contracts with the City for a period of up to five (5) years.

17           D. Respondent shall comply with the provisions of any order affording relief and shall furnish  
18 proof of compliance to the Department as specified in the order. In the event respondent refuses or fails  
19 to comply with the order, the Director shall notify the City Attorney of the same and the City Attorney  
20 shall invoke the aid of the appropriate court to secure enforcement or compliance with the order.

21           Section 15. Violation-Penalty.

22           It is unlawful for any person to willfully engage in an unfair practice under this ordinance or  
23 wilfully resist, prevent, impede or interfere with the Director or Hearing Examiner in the performance of  
24



1 their duties under this ordinance, or to fail, refuse, or neglect to comply with any lawful order of the  
2 Director or Hearing Examiner. Conduct made unlawful by this section constitutes a violation subject to  
3 the provisions of Chapter 12A.01 and Chapter 12A.02 of the Seattle Criminal Code and any person  
4 convicted thereof may be punished by a civil fine or forfeiture not to exceed Five Hundred Dollars  
5 (\$500.00).

6 Section 16. Requirement to comply. The City shall include the requirement to comply with this  
7 ordinance, as amended, in all contracts and agreements with recipients of grants and other funds through  
8 or from the City and with organizations which use City buildings, facilities or property or which use  
9 property for which the City is responsible for capital improvements.

10 Section 17. Enforcement by Private Persons

11 A. Any person who claims to have been injured by an unfair contracting practice may commence  
12 a civil action in a court of competent jurisdiction, not later than three years after the occurrence of the  
13 alleged unfair contracting practice or ninety (90) days after a determination of reasonable cause by the  
14 Director, whichever occurs last, to obtain appropriate relief with respect to such unfair contracting  
15 practice.

16 B. A civil action may be filed under this section whether or not an administrative charge has  
17 been filed under Section 6, and without regard to the status of such charge, but if the Department has  
18 obtained a pre-finding or post-finding settlement or conciliation agreement with the consent of the  
19 charging party, no civil action may be filed under this section with respect to the alleged unfair  
20 contracting practice which forms the basis for such complaint except for the purpose of enforcing the  
21 terms of the agreement. To preclude such filing, the charging party must be provided with written notice  
22 that consent to a pre-finding or post-finding settlement or conciliation agreement will terminate the  
23 charging party's right to file a civil action under this section.

1 C. (1) Subject to the provisions of subsection C(2), upon the filing of a civil action involving  
2 the same claim or arising from the same facts and circumstances, whether under this ordinance or similar  
3 law, a complaint of an unfair contracting practice may be administratively closed by the Director.

4 (2) In the event that a court dismisses a private cause of action on grounds that would not  
5 preclude pursuit of a charge under this ordinance, the charging party may request, within 90 days of the  
6 entry of the Court's order of dismissal, that the Department reopen a previously filed charge. Upon such  
7 request, the Director may reopen a case that was administratively closed upon the filing of a civil action.  
8 If the Department closes a case based on a "no reasonable cause" finding, the case shall not be reopened.

9 (3) No complainant or aggrieved person may secure relief from more than one  
10 governmental agency, instrumentality or tribunal for the same harm or injury.

11 (4) Where the complainant or aggrieved person elects to pursue simultaneous claims in  
12 more than one forum, the factual and legal determinations issued by the first tribunal to rule on the  
13 claims may, under the doctrines of "res judicata" or "collateral estoppel," be binding on all or portions of  
14 the claims pending before other tribunals.

15 (5) No civil action may be commenced under this section with respect to an alleged unfair  
16 contracting practice which forms the basis of a complaint if a hearing on the record has been commenced  
17 by the City of Seattle Office of the Hearing Examiner. To preclude such filing, a charging party must be  
18 provided with written notice at least 30 days prior to the commencement of a hearing before the City of  
19 Seattle Office of the Hearing Examiner that the commencement of such a hearing will terminate the  
20 charging party's right to file a civil action.

21 D. In a civil action under this section, if the court, or jury, finds that an unfair contracting  
22 practice has occurred, the court may grant such relief as may be awarded by the Hearing Examiner under  
23 this ordinance or is authorized by the Washington Law Against Discrimination, Ch. 49.60 RCW, as  
24

1 amended. Damages awarded under this section for humiliation and mental suffering are not subject to  
2 the limitation of Section 14.

3 E. Upon timely application, the City Attorney may intervene in such civil action, if the City  
4 Attorney certifies that the case is of general public importance, and may obtain such relief as would be  
5 available in an action brought under Section 13. Such intervention shall not be permitted in an action in  
6 which the City is a defendant.

7 Section 18. As requested by the Director of the Seattle Office for Civil Rights (SOCR), the  
8 following position, title and salary is created and added to the 1999 position list of the SOCR:

9 (1) Planning and Development II, 1 FTE \$22.12

10 Section 19. Severability. The provisions of this ordinance are declared to be separate and  
11 severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this  
12 ordinance, or the invalidity of the application thereof to any person or circumstance shall not affect the  
13 validity of the remainder of this ordinance, or the validity of its application to other persons or  
14 circumstances.

15 Section 20. This ordinance shall take effect and be in force thirty (30) days from and after its  
16 approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after  
17  
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1 presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

2 Passed by the City Council the \_\_\_\_ day of \_\_\_\_\_, 1999, and signed by me in open  
3 session in authentication of its passage this \_\_\_\_ day of \_\_\_\_\_, 1999.

4  
5 \_\_\_\_\_  
6 President \_\_\_\_\_ of the City Council

7 Approved by me this \_\_\_\_ day of \_\_\_\_\_, 1999.

8 \_\_\_\_\_  
9 Mayor

10 Filed by me this \_\_\_\_ day of \_\_\_\_\_, 1999.

11  
12 \_\_\_\_\_  
13 City Clerk

14 (Seal)

15  
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**SPONSORSHIP**

THE ATTACHED DOCUMENT IS SPONSORED FOR FILING WITH THE CITY COUNCIL BY  
THE MEMBER(S) OF THE CITY COUNCIL WHOSE SIGNATURE(S) ARE SHOWN BELOW:

*Martha Chase*

|       |       |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

**FOR CITY COUNCIL PRESIDENT USE ONLY**

COMMITTEE(S) REFERRED TO: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
PRESIDENT'S SIGNATURE

STATE OF WASHINGTON - KING COUNTY

109350  
City of Seattle, City Clerk

—ss.

No. 02, 03, 05/ORD

Affidavit of Publication

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

CTOT: 119592, 94, 601,

was published on

08/25/99

The amount of the fee charged for the foregoing publication is the sum of \$ \_\_\_\_\_, which amount has been paid in full.

*R. Patterson*

Subscribed and sworn to before me on

08/25/99

*M. Alvarez*

Notary Public for the State of Washington,  
residing in Seattle

# City of Seattle

## TITLE-ONLY PUBLICATION

The full text of the following ordinances, passed by the City Council on August 9, 1999, and published here by title only, will be mailed, at no cost, upon request for two months after this publication. For further information, contact the Seattle City Clerk at 684-8344.

### ORDINANCE NO. 119592

AN ORDINANCE relating to the Seattle Center; authorizing the Seattle Center Director to execute a construction agreement with the Seattle Children's Theatre Association for construction of a technical pavilion addition to the Charlotte Martin Theatre.

### ORDINANCE NO. 119594

AN ORDINANCE authorizing an expenditure from the Judgment/Claims Fund to be reimbursed by the Drainage Fund to settle the claim of Diane Dambacher (C-64860), all by a two-thirds vote of the City Council.

### ORDINANCE NO. 119601

AN ORDINANCE to be known as the Fair Contracting Practices Ordinance and prohibiting discrimination in contracting; providing remedies for victims of such discrimination; and creating a new position and increasing expenditure allowance in the 1999 Seattle Office for Civil Rights budget.

### ORDINANCE NO. 119602

AN ORDINANCE creating a program to promote the use of small economically disadvantaged businesses in competing for City contracting opportunities.

### ORDINANCE NO. 119603

AN ORDINANCE directing City Departments to use available tools to promote race and gender equity in contracting.

### ORDINANCE NO. 119605

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

Publication ordered by JUDITH PIP-PIN, City Clerk.

Date of official publication in Daily Journal of Commerce, Seattle, August 25, 1999. B/25(199350)