



King County

Metropolitan King County Council Charter Review Commission

STAFF REPORT

Agenda Item:		Name:	Patrick Hamacher
Proposed No.:		Date:	April 12 , 2019

SUBJECT

Potential Charter amendment to update the non-discrimination language.

BACKGROUND

Section 840 of the King County Charter provides for broad prohibition regarding discrimination against several protected classes. Currently, Section 840 reads as follows:

Section 840 Antidiscrimination.

There shall be no discrimination in employment or compensation of county officers or employees on account of sex, race, color, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, and the county shall not enter into any contract with any person, firm, organization, corporation or other nongovernmental entity that discriminates on the basis of sex, race, color, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions. (Ord. 16204 § 1, 2008).

SUMMARY

The County Charter prohibitions against discrimination and against contracting with vendors who discriminate is relatively broad. However, since the Charter provisions are typically reviewed only every ten years with each Charter Review Commission, it can be the case the King County Code has changes or that terms become dated or no longer in use or that new issues arise. Since the last revision to this section, the County Code has changes and new language has been adopted. The Charter Review Commission may wish to consider adding the following classes to the Charter as they are currently included in the County Code:

1. Pregnancy
2. Domestic violence victimization
3. Honorably discharged military or veteran status
4. Use of a service or assistive animal by a person with a disability

In addition, the CRC itself has discussed the potential of adding “political affiliation” to this section of the Charter.

ANALYSIS

There are two attachments to this document. The first is a simple crosswalk comparing the County Code, County Charter, State Constitution and various provisions of State Law as it pertains to protected classes. The second is a detailed analysis from the Prosecuting Attorney's Office that also incorporates provisions in federal law and provides more detailed analysis of the various protections and "where" those protections are included in the law.

It appears that the County Code that was updated as recently as 2018 is the most inclusive of protections for specific classes. Interestingly enough, the County Charter is also relatively current compared to state and federal provisions.

It appears that the protections currently contained in the County Code have added a few additional classes beyond what is currently included in the Charter. If the CRC members want to propose an amendment to the Charter that incorporates the provisions listed in the Summary section into the Charter then the revised Section 840 would look as follows (note: political affiliation is also shown because CRC members have discussed, but it is not currently in the code):

Section 840 Antidiscrimination.

There shall be no discrimination in employment or compensation of county officers or employees on account of sex, race, color, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, and the county shall not enter into any contract with any person, firm, organization, corporation or other nongovernmental entity that discriminates on the basis of sex, race, color, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, pregnancy, domestic violence victimization, honorably discharged veteran or military status, use of a service or assistive animal by a person with a disability, or political affiliation.

ATTACHMENTS

1. Crosswalk between Code, Charter, State Constitution and RCW
2. Non-discrimination analysis prepared by PAO

ATTACHMENT 1

Comparison of County Charter and County Code to State Constitution and Revised Code of Washington			
County Code (Ord 18757)	County Charter (Section 840)	State Constitution	RCW 49.60.030
Race	Race		Race
Color	Color		Color
Gender	Sex	Sex (Article 31. Section 1)	Sex
Age	Age except by Minimum Age and Retirement Provisions		
Creed			Creed
Disability	Disability		
Marital Status			Presence of any sensory, mental or physical disability
National Origin	National Origin		National Origin
Religion	Religious Affiliation	Religion (Art. 1. Sect 11)	
Pregnancy			
Gender Identity or Expression	Gender Identity or Expression of Person		
Domestic Violence Victimization			
Sexual Orientation	Sexual Orientation		Sexual Orientation
Honorably Discharged Veteran or Military Status			Honorably Discharged Veteran or Military Status
Use of Service or Assistive Animal by Person with Disability			use of trained guide dog or service animal by a person with a disability
Any Other Status Protected by Federal, State or Local Law			
Retaliation of Any King re: Reporting of Above			
	Prohibition on Contracting with firms that violate above.		
			Breastfeeding in any public resort, accommodation, assemblage or amusement

Class	Authority and Application
Sex	<ul style="list-style-type: none"> ○ Title VII of the Civil Rights Act of 1964 (Title VII) prohibits employers from discriminating against employees. See 42 U.S.C. § 2000e et seq. ○ WA Constitution Article 31, Section 1 (“Equality of rights and responsibility under the law shall not be denied or abridged on account of sex.”) ○ RCW 49.60.030 (employment, public accommodations, housing, credit transactions, insurance, commerce free from discriminatory boycotts or blacklists, and a mother’s right to publicly breastfeed her child) ○ KC Charter Section 840 (county employment and county contracts with persons or non-governmental entities) <ul style="list-style-type: none"> ○ King County Code (KCC) 12.17.010 (“gender” – prohibits discrimination when King County is acting as a contractor or is awarding a contract, and to contracts between entities doing business in unincorporated King County)¹ ○ KCC 12.18.010 (“gender” - employment discrimination) ○ KCC 12.20.010 (“gender” - discrimination in housing) ○ KCC 12.22.010 (“gender” - places of public accommodation)
Race	<ul style="list-style-type: none"> ○ Title VI of the Civil Rights Act of 1964 (Title VI) prohibits discrimination in any program or activity that receives federal funds or other federal financing assistance. See 42 U.S.C.A. § 2000d et seq. ○ Title VII of the Civil Rights Act of 1964 (Title VII) prohibits employers from discriminating against employees. See 42 U.S.C. § 2000e et seq. ○ RCW 49.60.030 (employment, public accommodations, housing, credit transactions, insurance, commerce free from discriminatory boycotts or blacklists, and a mother’s right to publicly breastfeed her child)

¹ KCC 12.17.010.F provides “[c]ontractor” means a business enterprise, including, but not limited to, a company, partnership, corporation or other legal entity, excluding real property lessors and lessees, contracting to do business within the county. “Contractor” includes, but is not limited to, a public works contractor, a consultant contractor, a provider of professional services, a service agency, a vendor, and a supplier selling or furnishing materials, equipment, goods or services, but does not include a governmental agency other than King County.

	<ul style="list-style-type: none"> ○ KC Charter Section 840 (county employment and county contracts with persons or non-governmental entities) <ul style="list-style-type: none"> ○ KCC 12.17.010 (prohibits discrimination when King County is acting as a contractor or is awarding a contract, and to contracts between entities doing business in unincorporated King County) ○ KCC 12.18.010 (employment discrimination) ○ KCC 12.20.010 (discrimination in housing) ○ KCC 12.22.010 (places of public accommodation)
Color	<ul style="list-style-type: none"> ○ Title VI of the Civil Rights Act of 1964 (Title VI) prohibits discrimination in any program or activity that receives federal funds or other federal financing assistance. See 42 U.S.C.A. § 2000d et seq. ○ Title VII of the Civil Rights Act of 1964 (Title VII) prohibits employers from discriminating against employees. See 42 U.S.C. § 2000e et seq. ○ RCW 49.60.030 (employment, public accommodations, housing, credit transactions, insurance, commerce free from discriminatory boycotts or blacklists, and a mother’s right to publicly breastfeed her child) ○ KC Charter Section 840 (county employment and county contracts with persons or non-governmental entities) <ul style="list-style-type: none"> ○ KCC 12.17.010 (prohibits discrimination when King County is acting as a contractor or is awarding a contract, and to contracts between entities doing business in unincorporated King County) ○ KCC 12.18.010 (employment discrimination) ○ KCC 12.20.010 (discrimination in housing) ○ KCC 12.22.010 (places of public accommodation)
National origin	<ul style="list-style-type: none"> ○ Title VI of the Civil Rights Act of 1964 (Title VI) prohibits discrimination in any program or activity that receives federal funds or other federal financing assistance. See 42 U.S.C.A. § 2000d et seq. ○ Title VII of the Civil Rights Act of 1964 (Title VII) prohibits employers from discriminating against employees. See 42 U.S.C. § 2000e et seq.

	<ul style="list-style-type: none"> ○ RCW 49.60.030 (employment, public accommodations, housing, credit transactions, insurance, commerce free from discriminatory boycotts or blacklists, and a mother’s right to publicly breastfeed her child) ○ KC Charter Section 840 (county employment and county contracts with persons or non-governmental entities) <ul style="list-style-type: none"> ○ KCC 12.17.010 (prohibits discrimination when King County is acting as a contractor or is awarding a contract, and to contracts between entities doing business in unincorporated King County) ○ KCC 12.18.010 (employment discrimination) ○ KCC 12.20.010 (discrimination in housing) ○ KCC 12.22.010 (places of public accommodation)
<p>Ancestry</p>	<ul style="list-style-type: none"> ○ KCC 12.17.010 (prohibits discrimination when King County is acting as a contractor or is awarding a contract, and to contracts between entities doing business in unincorporated King County) ○ KCC 12.18.010 (employment discrimination) ○ KCC 12.20.010 (discrimination in housing) ○ KCC 12.22.010 (places of public accommodation)
<p>Religious affiliation</p>	<ul style="list-style-type: none"> ○ Title VII of the Civil Rights Act of 1964 (Title VII) prohibits employers from discriminating against employees. 42 U.S.C. § 2000e et seq. ○ WA Constitution Article 1, Section 11 ○ RCW 49.60.030 (Although “creed” is not defined, courts have found that RCW 49.60 applies to discrimination based on religion. <i>See Marquis v. City of Spokane</i>, 130 Wn.2d 97, 112-3 (1996)). Applies to employment, public accommodations, housing, credit transactions, insurance, commerce free from discriminatory boycotts or blacklists, and a mother’s right to publicly breastfeed her child. ○ KC Charter Section 840 (county employment and county contracts with persons or non-governmental entities) <ul style="list-style-type: none"> ○ KCC 12.17.010 (prohibits discrimination when King County is acting as a contractor or is awarding a contract, and to contracts between entities doing business in unincorporated King County)

	<ul style="list-style-type: none"> ○ KCC 12.18.010 (employment discrimination) ○ KCC 12.20.010 (discrimination in housing) ○ KCC 12.22.010 (places of public accommodation)
Creed	<ul style="list-style-type: none"> ○ RCW 49.60.030 (Although “creed” is not defined, courts have found that RCW 49.60 applies to discrimination based on religion. See <i>Marquis v. City of Spokane</i>, 130 Wn.2d 97, 112-3 (1996)). Applies to employment, public accommodations, housing, credit transactions, insurance, commerce free from discriminatory boycotts or blacklists, and a mother’s right to publicly breastfeed her child.
Disability	<ul style="list-style-type: none"> ○ The Americans with Disabilities Act of 1990 (ADA) applies in many areas of public life, including employment (title I), government services (title II), public accommodations (title III), and telecommunications (title IV). See 42 U.S.C. chapter 126. ○ RCW 49.60.030 (“the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability”). Applies to employment, public accommodations, housing, credit transactions, insurance, commerce free from discriminatory boycotts or blacklists, and a mother’s right to publicly breastfeed her child. ○ KC Charter Section 840 (county employment and county contracts with persons or non-governmental entities) <ul style="list-style-type: none"> ○ KCC 12.17.010 (prohibits discrimination when King County is acting as a contractor or is awarding a contract, and to contracts between entities doing business in unincorporated King County) ○ KCC 12.18.010 (employment discrimination) ○ KCC 12.20.010 (discrimination in housing) ○ KCC 12.22.010 (places of public accommodation)
Sexual orientation, gender identity ²	<ul style="list-style-type: none"> ○ RCW 49.60.030 (employment, public accommodations, housing, credit transactions, insurance, commerce free from discriminatory boycotts or blacklists, and a mother’s right to publicly breastfeed her child)

² Federal laws do not prohibit discrimination based on sexual orientation or gender identity; however, the Equal Employment Opportunity Commission has on occasion held that gender identity and sexual orientation fall within the category of “sex” in Title VII. See *Macy v. Department of Justice*, EEOC Appeal No. 0120120821 (April 20, 2012); See *David Baldwin v. Dep’t of Transportation*, EEOC Appeal No. 120133080 (July 15, 2015).

	<ul style="list-style-type: none"> ○ RCW 49.60.040(26) - “Gender expression or identity” is within the definition of “sexual orientation.” (“Sexual orientation” means heterosexuality, homosexuality, bisexuality, and gender expression or identity. As used in this definition, "gender expression or identity" means having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to that person at birth.”) ○ KC Charter Section 840 (county employment and county contracts with persons or non-governmental entities) <ul style="list-style-type: none"> ○ KCC 12.17.010 (prohibits discrimination when King County is acting as a contractor or is awarding a contract, and to contracts between entities doing business in unincorporated King County) ○ KCC 12.18.010 (employment discrimination) ○ KCC 12.20.010 (discrimination in housing) ○ KCC 12.22.010 (places of public accommodation)
Age	<ul style="list-style-type: none"> ○ KC Charter Section 840 (county employment and county contracts with persons or non-governmental entities). “Age” is qualified with “except by minimum age and retirement provisions.” <ul style="list-style-type: none"> ○ KCC 12.17.010 (prohibits discrimination when King County is acting as a contractor or is awarding a contract, and to contracts between entities doing business in unincorporated King County) ○ KCC 12.18.010 (employment discrimination) ○ KCC 12.20.010 (discrimination in housing) ○ KCC 12.22.010 (places of public accommodation)
Honorably discharged veteran or military status	<ul style="list-style-type: none"> ○ Uniformed Services Employment and Reemployment Rights Act (USERRA) prohibits employment discrimination against a person on the basis of past military services, current military obligations, or intent to serve. See 38 U.S.C.A. §§ 4301–4333, 4311. ○ RCW 49.60.030 (employment, public accommodations, housing, credit transactions, insurance, commerce free from discriminatory boycotts or blacklists, and a mother’s right to publicly breastfeed her child)

Political affiliation	<ul style="list-style-type: none"> ○ Not protected
Marital status	<ul style="list-style-type: none"> ○ KCC 12.17.010 (prohibits discrimination when King County is acting as a contractor or is awarding a contract, and to contracts between entities doing business in unincorporated King County) ○ KCC 12.18.010 (employment discrimination) ○ KCC 12.20.010 (discrimination in housing) ○ KCC 12.22.010 (places of public accommodation)
Parental status	<ul style="list-style-type: none"> ○ KCC 12.20.010 (discrimination in housing) ○ KCC 12.22.010 (places of public accommodation)
Participation in Section 8 or other housing subsidy program	<ul style="list-style-type: none"> ○ KCC 12.20.010 (discrimination in housing)
Alternative source of income	<ul style="list-style-type: none"> ○ KCC 12.20.010 (discrimination in housing)