

Chapter 12.17
DISCRIMINATION IN CONTRACTING

Sections:

- 12.17.002 Statement of purpose - findings.
- 12.17.003 Application of chapter.
- 12.17.004 Liberal construction of chapter.
- 12.17.005 Effect of chapter on right to actions or pursuit of remedies.
- 12.17.006 Effect of chapter on liability.
- 12.17.007 Effect of chapter on statutes of limitation.
- 12.17.008 Effect of chapter on actions by contractor based solely upon job performance.
- 12.17.010 Definitions.
- 12.17.020 Unfair contracting practices prohibited.
- 12.17.030 Complaint – filing – investigation – order – amendment – notice.
- 12.17.040 Complaint – investigation – notice – prefinding settlement agreement – discovery – subpoenas – enforcement – findings – reconsideration.
- 12.17.050 Settlement – order without settlement – compliance – penalties.
- 12.17.060 Hearing – order finality – appeal.
- 12.17.070 Enforcement by office of civil rights.
- 12.17.080 Enforcement by private persons.
- 12.17.090 Authorization to implement procedures.
- 12.17.100 Requirement to comply.

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12.17.002 Statement of purpose - findings. This chapter is an exercise of the police power of King County for the protection of the public welfare, health, peace and safety of the residents of King County and in fulfillment of the provisions of the constitution of this state. The King County council hereby finds and declares that practices of discrimination in contracting by business enterprises against any person on the basis of race, color, age, gender, marital status, sexual orientation, religion, ancestry, national origin, disability or use of a service or assistive animal by an individual with a disability constitute matters of local concern and are contrary to the public welfare, health, peace and safety of the residents of King County. (Ord. 15399 § 2, 2006: 15398 § 1, 2000).

12.17.003 Application of chapter. This chapter applies to: King County when King County is acting as a contractor or is awarding a contract; business enterprises having an agreement with King County; and other contractors, subcontractors, suppliers, materialmen, bonding agencies, trade associations, contracting agencies and other business enterprises and persons doing business in unincorporated King County. (Ord. 15399 § 3, 2006).

12.17.004 Liberal construction of chapter. This chapter shall be liberally construed for accomplishment of its policies and purposes. This chapter shall not be construed to endorse any specific belief, practice, behavior or orientation. Nothing in this chapter relating to gender-based discrimination affects the ability of an employer to require an employee to adhere to reasonable workplace appearance, grooming and dress standards not precluded by other provisions of state or federal law, though an employer shall allow an employee to appear or dress consistently with the employee's gender identity. (Ord. 15399 § 4, 2006).

12.17.005 Effect of chapter on right to actions or pursuit of remedies. Nothing in this chapter shall be deemed to deny any persons the right to institute any action or to pursue any other available civil or criminal remedy for the violation of those persons' civil rights. (Ord. 15399 § 5, 2006).

12.17.006 Effect of chapter on liability. Nothing in this chapter is intended to be nor shall be construed to create or form the basis for any liability on the part of King County, or its officers or agents, for any injury or damage resulting from or by reason of any act or omission in connection with the implementation or enforcement of this chapter on the part of King County by its officers, employees or agents. (Ord. 15399 § 6, 2006).

12.17.007 Effect of chapter on statutes of limitation. Nothing in this chapter shall be construed to toll the statute of limitations for any claims under federal or state statute. (Ord. 15399 § 7, 2006).

12.17.008 Effect of chapter on actions by contractor based solely upon job performance. Nothing in this chapter shall be construed to prohibit or apply to actions taken in good faith against any person by a contractor based solely upon their performance, qualifications or ability to perform in accordance with the terms of a contract or for other nondiscriminatory reasons. (Ord. 15399 § 8, 2006).

12.17.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

A. "Business enterprise" means a licensed business organization located in or doing business in unincorporated King County or that is required to comply with this chapter by the terms of an agreement with King County under K.C.C. 12.17.100.

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 office of civil rights when the office of civil rights files a complaint.

C. "Commercially significant contract" means a 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 that exceeds five thousand dollars.

D. "Contract" means an agreement to perform a service or provide goods that entails a legally binding obligation and that is performed or intended to be wholly or partly performed within unincorporated King County or that includes King County as a party. "Contract" does not include the following: a contract for the purchase and sale of residential real estate; a contract for employment; and a collective bargaining agreement.

E. "Contracting agency" means a person who for compensation engages in recruiting, procuring, referral or placement of contracts with a contractor, and that is doing business in King County.

F. "Contractor" 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.

G. "Discriminate," "discrimination" and "discriminatory act" mean an action, 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 reasons of race, color, age, gender, marital status, sexual orientation, religion, ancestry, national origin, disability or use of a service or assistive animal by an individual with a disability, unless based upon a bona fide contractual qualification.

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

I. "Party" includes the person making a complaint alleging an unfair contracting practice and the person alleged to have committed an unfair contracting practice.

J. "Person" includes one or more individuals, partnerships, business enterprises, associations, organizations, corporations, cooperatives, legal representatives, trustees, trustees in bankruptcy, receivers or group of persons and includes King County.

K. "Respondent" means a person who has been alleged or found to have committed an unfair contracting practice prohibited by this chapter.

L. "Retaliate" means to take action against any person because that person has:

1. Opposed any practice forbidden by this chapter;
2. Complied or proposed to comply with this chapter or any order issued under this chapter; or
3. Filed a complaint, testified or assisted in any manner in any investigation, proceeding or hearing initiated under this chapter.

M. "Sexual orientation" means heterosexuality, homosexuality, bisexuality and gender identity. As used in this definition "gender identity" means having or being perceived as having a gender identity different from that traditionally associated with the sex assigned to that person at birth. Protection associated with "gender identity" includes self-image, appearance, behavior or expression.

N. "Trade association" means an association of businesses organizations engaged in similar fields of business that is formed for mutual protection, the interchange of ideas, information and statistics or the maintenance of standards within their industry. (Ord. 15399 § 9, 2006: Ord. 13981 § 2, 2000).

12.17.020 Unfair contracting practices prohibited. It is an unfair contracting practice for a:

A. King County government agency, business enterprise doing business in unincorporated King County or business enterprise required to comply with this chapter by the terms of an agreement with King County under K.C.C. 12.17.100 to discriminate against a person with respect to the bid, award or referral of a contract or with respect to the conditions, terms, price, performance standards or other provisions of a contract;

B. Contracting agency or trade association to discriminate against a person with respect to membership rights and privileges, admission to or participation in a guidance program or other business or occupational training program;

C. Bonding company to discriminate against a person regarding the terms and conditions under which bonding services are offered or performed;

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

E. Contractor, business enterprise, contracting agency or trade association to retaliate against a person because that person has opposed an act of discrimination or because that person has made a charge, testified or assisted in any manner in an investigation, proceeding or hearing initiated under this chapter. (Ord. 13981 § 3, 2000).

12.17.030 Complaint – filing – investigation – order – amendment – notice.

A. An individual complaint alleging an unfair contracting practice in connection with a commercially significant contract may be filed with the office of civil rights by or on behalf of any person who claims to be aggrieved by that unfair contracting practice.

B. 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:

1. Any member of the group;

2. The office of civil rights;

3. A state or federal agency concerned with discrimination in contracting whenever the agency has reason to believe that an unfair contracting practice has been or is being committed; or

4. A trade association that has reason to believe that an unfair contracting practice has been or is being committed against any of its members.

C. A complaint alleging an unfair contracting practice shall be in writing on a form or in a format determined by the office of civil rights, shall be signed by the charging party, shall describe with particularity the unfair contracting practice complained of and shall include a statement of the dates, places and circumstances and the persons responsible for the acts and practices. The complaint must be filed within one hundred eighty days of the time of the alleged unfair contracting practice or within one hundred eighty days of when the charging party, through exercise of due diligence, should have had notice or been aware of the occurrence. However, the office of civil rights shall not reject a complaint as insufficient because of failure to include all required information, if the office of civil rights determines that the complaint substantially meets the informational requirements necessary for processing.

D. If a complaint has been filed in accordance with this chapter, the office of civil rights shall initiate an investigation under this chapter. If the office of civil rights determines that a violation of this chapter or a rule or regulation adopted under this chapter has occurred, the office shall issue an order in accordance with this chapter. With respect to violations of this chapter, the notice, service and hearings provisions in this chapter control over K.C.C. Title 23.

E. The charging party or the office of civil rights may amend a complaint: to cure technical defects or omissions; to clarify and amplify allegations made in the complaint; 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, the amendments shall relate back to the date the original complaint was first filed. Either the charging party or the office of civil rights, or both, may amend a complaint for these reasons as a matter of right before service of notice of hearing on the matter, as provided under K.C.C. 12.17.070, and thereafter may amend a complaint only with permission of the hearing examiner, which permission shall be granted if justice will be served by the permission. All parties must be allowed time to prepare their cases with respect to additional or expanded allegations that the parties did not and could not have reasonably foreseen would be an issue at the hearing.

F. The charging party may also amend a complaint to include allegations of additional unrelated unfair contracting practices that arose after filing of the original complaint. The amendment must be filed within one hundred eighty days after the occurrence of the additional alleged unfair contracting practices and before the issuance of findings of fact and a determination with respect to the original complaint by the office of civil rights. The amendments may be made at any time during the investigation of the original complaint if the office of civil rights will have adequate time to investigate the additional allegations and the parties will have adequate time to present the office of civil rights with evidence concerning the allegations before the issuance of findings of fact and a determination.

G. Upon the receipt of a complaint, the office of civil rights shall serve notice upon the charging party acknowledging the filing. (Ord. 15399 § 10, 2006; Ord. 13981 § 4, 2000).

12.17.040 Complaint – investigation – notice – prefinding settlement agreement – discovery – subpoenas – enforcement – findings – reconsideration.

A. Upon receipt of a complaint meeting the requirements of K.C.C. 12.17.030, the office of civil rights shall, within twenty days, cause to be served or mailed to the respondent by certified mail, return receipt requested, a copy of the complaint along with a notice advising of procedural rights and obligations of respondents under this ordinance, and shall promptly make an investigation of the complaint. Each respondent may file an answer to the complaint, not later than twenty days after receipt of notice from the office of civil rights. If the respondent is unable to file a response within twenty days, the respondent may request an extension of time from the office of civil rights. The extension may be granted if good cause is shown.

B. The investigation shall be commenced promptly. It shall be directed to ascertain the facts concerning the discriminatory practice alleged in the complaint and shall be conducted in an objective and impartial manner.

C. During the investigation, the office of civil rights shall consider any statement of position or evidence with respect to the allegations of the complaint which the charging party or the respondent wishes to submit. A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of the investigation, may be joined as an additional or substitute respondent upon written notice to the person from the office of civil rights. The notice, in addition to meeting the requirements of subsection A. of this section, shall explain the basis for the belief of the office of civil rights that the person to whom the notice is addressed is properly joined as a respondent.

D. During the period beginning with the filing of the complaint and ending with the issuance of the findings of fact, the office of civil rights shall, to the extent feasible, engage in settlement discussions with respect to the complaint. Nothing said or done in the course of the settlement discussions may be used as evidence in a subsequent proceeding under this ordinance without the written consent of the persons concerned. A prefinding settlement agreement arising out of the settlement discussions shall be an agreement between the respondent and the charging party, and is subject to approval by the office of civil rights. Failure to comply with the prefinding settlement agreement may be enforced under K.C.C. 12.17.070.

E. The office of civil rights shall seek the voluntary cooperation of all persons: to obtain access to premises, records, documents, individuals and other possible sources of information; to examine, record and copy necessary materials; and to take and record testimony or statements of persons reasonably necessary for the furtherance of the investigation. The office of civil rights may conduct discovery in aid of the investigation by the following methods or others: deposition upon oral examination or written questions; written interrogatories; requests for the production of documents or evidence; inspection and physical and mental examinations; and requests for admissions. The office of civil rights may sign and issue subpoenas requiring the attendance and testimony of witnesses, the production of evidence including, but not limited to, books, records, correspondence, e-mail or documents in the possession or under the control of the person subpoenaed, access to evidence for the purpose of examination and copying as are necessary for the investigation. The office of civil rights shall consult with the prosecuting attorney before issuing any subpoena under this section.

F. If an individual fails to obey a subpoena, or obeys a subpoena but refuses to testify when requested concerning any matter under investigation, the office of civil rights may invoke the aid of the King County prosecuting attorney who may petition the King County superior court for an order or other appropriate action necessary to secure enforcement of the subpoena. The petition shall:

1. Be accompanied by a copy of the subpoena and proof of service;
2. Set forth in what specific manner the subpoena has not been complied with; and
3. Ask an order of the court to compel the witness to appear and testify or cooperate in the investigation of the unfair contracting practice.

G. If the office of civil rights concludes after the filing of a complaint that prompt judicial action is necessary to carry out the purposes of this chapter, the office of civil rights may invoke the aid of the prosecuting attorney who may file a civil action for appropriate temporary, injunctive or preliminary relief pending final disposition of the complaint.

H. The results of the investigation shall be reduced to written findings of fact and a finding shall be made that there either is or is not reasonable cause for believing that an unfair contracting practice has been or is being committed.

I. If a finding is made that there is no reasonable cause, the finding shall be served on the charging party and respondent. Within thirty days after service of the negative finding, the charging party may file a written request with the office of civil rights asking for reconsideration of the finding. The office of civil rights shall furnish the charging party with information regarding how to request reconsideration. The office of civil rights shall respond in writing within a reasonable time by granting or denying the request. (Ord. 15399 § 11, 2006; Ord. 15399 § 11, 2006; Ord. 13981 § 5, 2000).

12.17.050 Settlement – order without settlement – compliance – penalties.

A.1. If the finding is made initially or on request for reconsideration that reasonable cause exists to believe that an unfair contracting practice occurred, the office of civil rights shall endeavor to eliminate the unfair practice by conference, conciliation and persuasion, which may include as a condition of settlement:

- a. elimination of the unfair contracting practice;
- b. payment of actual damages including payment of lost profits not in excess of the amount of monetary damage actually incurred;
- c. payment of damages caused by emotional distress, humiliation and embarrassment;
- d. payment of attorneys' fees and costs; and
- e. such other requirements as may be agreed upon by the parties and the office of civil rights.

2. A settlement agreement shall be reduced to writing and signed by the respondent and the charging party and shall be approved by the office of civil rights. An order shall then be entered by the office of civil rights setting forth the terms of the agreement. Copies of the order shall be delivered to all affected parties and the original of the order filed with the records and licensing services division. Failure to comply with the postfinding settlement agreement or order may be enforced under K.C.C. 12.17.070. Each postfinding settlement agreement is a public record.

B.1. If the parties cannot reach agreement, the office of civil rights shall make a finding to that effect, incorporate the findings in the order and furnish a copy of the order to all affected parties. The order shall also include:

- a. a finding that an unfair contracting practice has occurred;
- b. the basis for the finding; and
- c. an order requiring the respondent to cease and desist from the unfair practice and to take appropriate affirmative measures, which may include:
 - (1) payment of actual damages including payment of lost profits not in excess of the amount of monetary damages actually incurred;
 - (2) payment of damages caused by emotional distress, humiliation and embarrassment;
 - (3) payment of attorneys' fees and costs; and
 - (4) such other action as in the judgment of the office of civil rights will effectuate the purposes of this chapter, which may include the requirement for a report on the matter of compliance.

2. If the office of civil rights finds the respondent willfully or knowingly committed any unfair contracting practice, the office of civil rights may further order the respondent to pay a civil penalty of up to one thousand dollars per violation, which penalty shall be paid to the King County treasury for deposit in the county general fund.

C. If there is a failure to reach an agreement for the elimination of any unfair contracting practice where the respondent is an executive department, division or office of the county, the office of civil rights may compel compliance by the executive department, division or office with any settlement agreement agreed to between the complainant and the office of civil rights. (Ord. 15971 § 66, 2007: Ord. 15399 § 12, 2006: Ord. 13981 § 6, 2000)

12.17.060 Hearing – order finality – appeal.

A.1. A party aggrieved by an order of the office of civil rights may request in writing within thirty days of the service of the order an appeal hearing before the county office of the hearing examiner. The request for hearing shall be filed with the office of civil rights. The request for hearing must identify clearly and specifically:

- a. the errors that the appellant believes were made in the action or decision that is being appealed, or the procedural irregularities associated with that action or decision;
- b. specific reasons why the county's action should be reversed or modified; and
- c. the desired outcome of the appeal.

2. Unless the hearing examiner authorizes an amendment to the statement of appeal, the identification of errors and the statement of reasons for reversal or modification defines and limits the issues that the examiner may consider.

B. An order issued by the office of civil rights in accordance with procedures in this chapter becomes final thirty days after service of the order unless a written request for hearing is filed with the office of civil rights within the thirty-day period.

C. If the order of the office of civil rights is appealed, the office of the hearing examiner shall conduct a hearing for the purpose of affirming, denying or modifying the order. There shall be a verbatim record kept of the hearing and the hearing examiner shall have such rule-making and other power necessary for the conduct of the hearing as are specified by K.C.C. 20.24.170. The order of the office of civil rights shall not be presumed correct. The hearing examiner's decision shall be based upon a preponderance of the evidence. The hearing shall be conducted within a reasonable time after receipt of the request for appeal. Written notice of the time and place of the hearing shall be given at least ten days before the date of the hearing to each affected party and to the office of civil rights.