

Chapter 12.22
DISCRIMINATION IN PLACES OF PUBLIC ACCOMMODATIONS

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12.22.010 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 state Constitution. The King County council hereby finds and declares that the practice of discrimination against any person on the basis of race, color, gender, marital status, parental status, sexual orientation, religion, ancestry, age, national origin, disability or use of a service or assistive animal by an individual with a disability in places of public accommodation constitute matters of local concern and are contrary to the public welfare, health, peace and safety of the residents of King County. (Ord. 15399 § 60, 2006; Ord. 8625 § 1, 1988).

12.22.013 Application of chapter. This chapter applies to places of public accommodation operated by King County and applies to actions involving places of public accommodation located in unincorporated King County. (Ord. 15399 § 61, 2006).

12.22.014 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 § 62, 2006).

12.22.015 Effect of chapter on right to actions or pursuit of remedies. Nothing in this chapter shall be deemed to deny any person the right to institute any action or to pursue any other available civil or criminal remedy for the violation of the person's civil rights. (Ord. 15399 § 63, 2006).

12.22.016 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 § 64, 2006).

12.22.017 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 § 65, 2006).

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

A. "Aggrieved person" includes any person who claims to have been injured by an act of discrimination in a place of public accommodation;

B. "Charging party" means any person alleging an act of discrimination in a place of public accommodation under this chapter by filing a complaint with the office of civil rights.

C.1. "Disability" means:

a. a physical or mental impairment that substantially limits one or more of a person's major life activities, either temporarily or permanently;

b. a person has a record of having such an impairment;

c. a person is regarded as having such an impairment; or

d. a person has any other condition that is a disability under the Washington state Law Against Discrimination, chapter 49.60 RCW, as it pertains to public accommodations.

2. "Disability" does not include current, illegal use of a controlled substance, as defined in section 102 of 21 U.S.C. Sec. 802 as it exists on April 16, 2006.

D. "Discrimination" or "discriminatory practice or act" means any action or failure to act, whether by a single act or part of a practice, the effect of which is to adversely affect or differentiate between or among individuals, because of race, color, religion, national origin, ancestry, age, gender, marital status, parental status, sexual orientation, disability or use of a service or assistive animal by an individual with a disability.

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

F. "Owner" includes a person who owns, leases, subleases, rents, operates, manages, has charge of, controls or has the right of ownership, possession, management, charge or control of real property on his or her own behalf or on behalf of another.

G. "Parental status" means being a parent, step-parent, adoptive parent, guardian, foster parent or custodian of a minor child or children.

H. "Party" includes a person making a complaint or upon whose behalf a complaint is made alleging an unfair public accommodations practice, a person alleged or found to have committed an unfair public accommodations practice and the office of civil rights.

I. "Person" means one or more individuals, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees, trustees in bankruptcy, receivers or any group of persons, and includes King County but no governmental body other than King County. "Person" also includes any owner, lessee, proprietor, manager, agent or employee whether one or more natural persons.

J. "Place of public accommodation" means any place, store or other establishment, either licensed or unlicensed, that supplies goods or services to the general public. "Place of public accommodation" includes, but is not limited to, the following types of services or facilities: hotels, or other establishments provide lodging to transient guests; restaurants, cafeterias, lunchrooms, lunch counters, soda fountains or other facilities principally engaged in selling or offering for sale food for consumption upon the premises; motion picture houses, theatres, concert halls, convention halls, sport arenas, stadiums or other places of exhibition or entertainment; bowling alleys and amusement parks; retail establishments; transportation carriers; barber shop; beauty shops; bars or taverns or other facilities engaged in selling or offering for sale alcoholic beverages for consumption upon the premises; food banks, senior citizens centers and other social service organizations and establishments; places of public accommodation operated by King County; and public burial facilities if the facilities are owned and operated by any cemetery corporation or burial association.

K. "Respondent" means a person who is alleged or found to have discriminated in a place of public accommodation.

L. "Senior citizen" means an individual as old or older than an age set for a senior category. The minimum age for the senior category is fifty-five years.

M. "Service or assistive animal" means a dog guide, signal or hearing dog, seizure response dog, therapeutic companion animal or other animal that does work, performs tasks or provides medically necessary support for the benefit of an individual with a disability.

N. "Settlement discussions" or "conference, conciliation and persuasion" means the attempted resolution of issues raised by a complaint, or by the investigation of a complaint, through informal negotiations involving the charging party, the respondent and the office of civil rights.

O. "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. (Ord. 15399 § 66, 2006: Ord. 14199 § 150, 2001: Ord. 8625 § 2, 1988).

12.22.030 Discrimination in places of public accommodation. It is unlawful for any person to engage in, or cause or allow another to engage in, any of the acts listed in this section, which are hereby designated as discrimination, in places of public accommodation located in unincorporated King County or operated by King County wherever located.

A. It is a discriminatory practice for any person, whether acting for himself or herself or another, because of race, color, religion, national origin, ancestry, age, gender, marital status, parental status, sexual orientation, disability or use of a service or assistive animal by an individual with a disability:

1. As owner, custodial agent or employee of a place of public accommodation, to discriminate in denying, refusing, rejecting or granting any privilege, service, goods, merchandise, commodity or accommodation;

2. As owner, custodial agent or employee of a place of public accommodation, to discriminate by segregating or requiring the placing of any person in any separate section or area of the premises or facilities of the place of public accommodation; or

3. To place, post, maintain or display any written or printed advertisement, notice or sign to the effect that any of the accommodations, advantages, facilities, privileges, goods or merchandise of any place of public accommodation, will or might be refused, withheld from or denied to any person.

B. It is a discriminatory practice and unlawful for any person, whether acting on her or her own behalf or for another, to retaliate by taking action against another person because the other person:

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.

C. Nothing in this section:

1. Applies to any non-commercial facility operated or maintained by a bona fide religious institution;

2. May be construed to prohibit treating individuals with disabilities more favorably than individuals without disabilities or to prohibit treating senior citizens more favorably than nonsenior citizens; or

3. May be construed to prohibit offering discounts, special prices or other special arrangements to children or families or imposing age limits for individuals up to twenty-one years old. (Ord. 15399 § 67, 2006: Ord. 8625 § 3, 1988).

12.22.040 Filing of a complaint.

A. A complaint alleging discrimination in a place of public accommodation may be filed by:

1. Any aggrieved person; or

2. Any state, local or federal agency concerned with discrimination in places of public accommodation, including the office of civil rights, if the agency has reason to believe that a discriminatory act or practice has been or is being committed.

B. A complaint alleging discrimination in a place of public accommodation shall be in writing and signed by the charging party. The complaint must be filed with the office of civil rights within one hundred eighty days of the occurrence of the alleged discrimination 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. The complaint must describe with particularity the practice complained of and the location of the practice and must identify the person being charged with committing the discrimination. 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.

C. Upon the receipt of a complaint, the office of civil rights shall serve notice upon the charging party acknowledging the filing.

D. 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 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. 12.22.070, and thereafter may amend a complaint only with the permission of the hearing examiner, which permission shall be granted if justice will be served by the permission, and all parties shall 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.

E. The charging party may also amend a complaint to include allegations of additional unrelated discriminatory acts that arose after filing of the original complaint. The charging party must file any amendments adding the allegations within one hundred eighty days of the occurrence of the alleged discrimination 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 additional discriminatory act, 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. (Ord. 15399 § 68, 2006: Ord. 8625 § 4, 1988).

12.22.050 Investigation of complaint.

A. After the filing of a complaint, the office of civil rights shall serve notice of the complaint and a copy of the complaint on the respondent within twenty days after the filing 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 a 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 by the office of civil rights if good cause is shown. The office of civil rights shall commence the investigation of the complaint promptly.

B. The office of civil rights shall direct the investigation to ascertain the facts concerning the discrimination in public accommodations alleged in the complaint and shall conduct the investigation in an objective and impartial manner. During the investigation, the office of civil rights shall consider any statement of position or evidence with respect to the allegations of the complaint that 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, as provided under subsection A. of this section, to the person from the office of civil rights. The notice, in addition to meeting the requirements of subsection A. of this section, must 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.

C. 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. Anything said or done in the course of the settlement discussions may not be made public or used as evidence in a subsequent proceeding under this chapter without the written consent of the persons concerned. A prefinding settlement agreement arising out of the settlement discussions must be an agreement between the respondent and the charging party, and is subject to approval by the office of civil rights. Each prefinding settlement agreement is a public record. Failure to comply with the prefinding settlement agreement may be enforced under K.C.C. 12.22.080.

D. 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 other evidence, inspection and other purposes; 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 and the production of or access to evidence including books, records, correspondence, e-mail or documents in the possession or under the control of the person subpoenaed as are necessary for the investigation. The office of civil rights shall consult with the prosecuting attorney before issuing a subpoena under this section.

E. If an individual fails to obey a subpoena issued under this section, or obeys the subpoena but refuses to testify if requested concerning a matter under investigation under this section, the office of civil rights may invoke the aid of the prosecuting attorney who may petition to the 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 for an order of the court to compel the witness to appear and testify or cooperate in the investigation of the discrimination in public accommodations.

F. If the office of civil rights concludes at any time 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 case.

G. The office of civil rights shall reduce the results of the investigation to written findings of fact make and a finding that there either is or is not reasonable cause for believing that an act of discrimination in a place of public accommodations has been or is being committed.

H. 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 such a 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 § 69, 2006; Ord. 8625 § 5, 1988).

12.22.060 Conference, conciliation and persuasion - orders.

A.1. If the office of civil rights makes the finding initially or on request for reconsideration that reasonable cause exists to believe that discrimination in a place of public accommodation occurred, the office of civil rights shall endeavor to eliminate the discriminatory practice by conference, conciliation and persuasion, which may include as a condition of settlement:

- a. elimination of the discriminatory practice;
- b. payment of refunds or credits not in excess of the amount of monetary damage actually incurred;
- c. payment of other actual damages, including damages caused by emotional distress, humiliation and embarrassment;
- d. payment of attorneys' fees and costs;
- e. participation in training on public accommodations laws; and
- f. such other requirements as may lawfully be agreed upon by the parties and the office of civil rights.

2. Any postfinding settlement agreement shall be reduced to writing and signed by all parties, with the approval of the office of civil rights. The office of civil rights shall then enter an order setting forth the agreement and furnish copies of the order to all affected parties. Each postfinding settlement agreement is a public record. Failure to comply with the postfinding settlement agreement or order may be enforced under K.C.C. 12.22.080.

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

- a. a finding that discrimination in a place of public accommodation occurred;
- b. the basis for the finding;
- c. an order requiring the respondent to cease and desist from such discriminatory practice and to take appropriate affirmative measures, which may include:
 - (1) payment of refunds or credit or other damages not to exceed monetary damage actually incurred;
 - (2) payment of other actual damages, including damages caused by emotional distress, humiliation and embarrassment;
 - (3) payment of attorneys' fees and costs;
 - (4) participation in training in public accommodations laws; or
 - (5) 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 discrimination in a place of public accommodation, 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. (Ord. 15399 § 70, 2006; Ord. 8625 § 6, 1988).

12.22.070 Hearing - appeal.

A.1. Any respondent or charging party, after an order of the office of civil rights is made in accordance with K.C.C. 12.22.060.B, may request an appeal hearing before the hearing examiner by filing a written request for hearing within thirty days of the service of the order. 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. Any 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 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. The hearing examiner has such rule-making and other powers 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.

D. Each party may, among exercising other rights:

1. Call and examine witnesses on any matter relevant to the issues of the complaint;
2. Introduce documentary and physical evidence;
3. Cross-examine opposing witnesses on any matter relevant to the issues of the complaint;
4. Impeach any witness regardless of which party first called the witness to testify;
5. Rebut evidence against him or her; and
6. Represent himself or herself or be represented by anyone of his or her choice who is lawfully permitted to do so.

E. Following review of the evidence submitted, the hearing examiner presiding at the hearing shall enter written findings and conclusions and shall affirm or modify the order previously issued if the hearing examiner finds that a violation occurred. The hearing examiner shall reverse the order if the hearing examiner finds that a violation did not occur. The hearing examiner may grant as relief any relief that the office of civil rights could grant under K.C.C. 12.22.060.B. A copy of the hearing examiner's decision shall be delivered to all affected parties. The order of the hearing examiner is final unless reviewed by a court under K.C.C. 20.24.240.B. (Ord. 15399 § 71, 2006; Ord. 8625 § 7, 1988).

12.22.080 Enforcement by the office of civil rights.

A. If the office of civil rights has reasonable cause to believe that a respondent breached a prefinding or postfinding settlement agreement executed under K.C.C. 12.22.050 or 12.22.060, or violated an order of the office of civil rights issued under K.C.C. 12.22.060 or an order of the hearing examiner issued under K.C.C. 12.22.070, the office of civil rights shall refer the matter to the prosecuting attorney for the filing of a civil action under subsection B. of this section for the enforcement of the agreement.

B. The prosecuting attorney may commence a civil action in superior court for appropriate relief with respect to a breach of a prefinding or postfinding settlement agreement executed under K.C.C. 12.22.050 or 12.22.060, or violation of an order of the office of civil rights issued under K.C.C. 12.22.060 or an order of the hearing examiner issued under K.C.C. 12.22.070. The action may be commenced no later than ninety days after the referral of the alleged breach underlying the referral under subsection A. of this section. (Ord. 15399 § 72, 2006; Ord. 8625 § 8, 1988).

12.22.085 Enforcement by private persons.

A. An aggrieved person may commence a civil action in superior court not later than one year after the occurrence or termination of alleged discrimination in a place of public accommodation or ninety days after a determination of reasonable cause is issued by the office of civil rights, whichever occurs last, to obtain appropriate relief with respect to the discrimination in public accommodations.

B. A civil action may be filed under this section whether or not an administrative complaint has been filed under K.C.C. 12.22.040 and without regard to the status of the complaint. However, if the office of civil rights obtained a prefinding or postfinding settlement or conciliation agreement with the consent of the aggrieved person, an action may not be filed by the aggrieved person with respect to the alleged discrimination in public accommodations that forms the basis for the complaint except for the purpose of enforcing the agreement. To preclude such a filing, the prefinding or postfinding settlement or conciliation agreement must include language that the aggrieved person knowingly waives any right to file a civil action under this section based on the same alleged discrimination in public accommodations.

C. Subject to subsection D. of this section, after the filing of a civil action involving the same claim or arising from the same facts and circumstances, whether under this chapter or similar law, the office of civil rights may administratively close a complaint of discrimination in public accommodations.

D. If a court dismisses a private cause of action without reaching the merits and on grounds that would not preclude pursuit of a complaint under this chapter, the charging party may request, within ninety days of the entry of the court's order of dismissal, that the office of civil rights reopen a previously filed case. Upon such a request, the office of civil rights may reopen a case that was administratively closed upon the filing of a civil action. If the office of civil rights closes a case based on a "no reasonable cause" finding, the case may not be reopened except as provided through reconsideration under K.C.C. 12.22.050.

E. A charging party or aggrieved person may not secure relief from more than one governmental agency, instrumentality or tribunal for the same harm or injury.

F. An aggrieved person may not commence a civil action under this section with respect to an alleged discrimination in public accommodations practice that forms the basis of a complaint if a hearing on the complaint has been convened under K.C.C. 12.22.070.

G. In a civil action under this section, if the court finds that discrimination in public accommodations occurred, the court may grant such relief as is available for violations of the Washington state Law Against Discrimination, chapter 49.60 RCW.

H. Upon timely application, the prosecuting attorney may intervene in the civil action, if the prosecuting attorney determines that the case is of general public importance.

I. This section is intended to provide private judicial remedies for violations of this chapter that are as expansive as the powers granted by the Constitution and laws of the state of Washington. (Ord. 15399 § 59, 2006).

(King County 3-2006)

12.22.090 Authorization to implement procedures. The office of civil rights may implement such forms, administrative processes and operational procedures as are necessary to comply with this chapter. The forms, processes and procedures shall be adopted in compliance with K.C.C. chapter 2.98. (Ord. 15399 § 73, 2006; Ord. 8625 § 9, 1988).

12.22.095 Code compliance.

A. If a complaint has been filed under this chapter, the office of civil rights shall initiate an investigation under the provisions of this chapter.

B. If the office of civil rights determines that a violation of this chapter or any rules and regulations adopted under this chapter occurred, the office shall issue an order under this chapter. For violations of this chapter, if a conflict exists between this chapter and K.C.C. Title 23, this chapter controls over K.C.C. Title 23. (Ord. 15399 § 74, 2006; Ord. 13263 § 54, 1998).

12.22.100 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of this chapter or the application of the provision to other persons or circumstances is not affected. (Ord. 15399 § 75, 2006; Ord. 8625 § 10, 1988).