

City of Seattle

# Guidance on Gender Identity in the Workplace



**Seattle**  
Office for Civil Rights



**Seattle** Department of  
Human Resources

# Contents

- Overview ..... 1
- Core Definitions ..... 3
  - Discrimination/Harassment ..... 4
  - Privacy ..... 5
  - Names/Pronouns ..... 5
  - Official Records ..... 6
  - Gender-Segregated Job Assignments ..... 6
  - Locker Room and Restroom Accessibility ..... 6
  - Hiring Process ..... 7
  - Dress Codes ..... 7
  - Health Insurance Benefits ..... 7
  - Leave Benefits ..... 8
- Transitioning on the Job ..... 8
  - Transition Plan ..... 9
    - Communication and Training ..... 9
    - Updating Records ..... 11
- Appendix A – Personnel Rule 1.1 ..... 12
- Appendix B - Seattle Municipal Code 14.04.010 ..... 16

*An inter-departmental City committee drafted these guidelines in the fall of 2016 and shared them with City departments in early 2017. A Racial Equity Lens and stakeholder engagement were utilized in developing these guidelines. At the close of 2017, the committee will reconvene to review the performance of these guidelines over the previous year.*

*If you are interested in providing feedback on these guidelines now, or at the review at the end of 2017, please contact either: Loren Othon, Policy Analyst for the Gender Justice Project, Office for Civil Rights, at (206) 684-4528 or at [loren.othon@seattle.gov](mailto:loren.othon@seattle.gov); Bailey Hinckley, Workforce Equity Program Manager, Seattle Department of Human Resources, at (206) 727-3681 or at [bailey.hinckley@seattle.gov](mailto:bailey.hinckley@seattle.gov).*

## Overview

This document defines the City of Seattle's expectations for welcoming and supporting transitioning, gender diverse and transgender City employees. It also serves as a roadmap for transitioning employees and their supervisors and coworkers. The goal is a safe and productive workplace environment for all employees. Starting in 2018, an online training module and sample scripts will also accompany these tools.

## Introduction

The City of Seattle does not discriminate in any way based on sex, sexual orientation, gender identity, or gender expression, as protected in Personnel Rule 1.1 and Seattle Municipal Code 14.04.010. (See Appendix A and B).

The City expects departments and all employees to welcome and support transitioning, gender diverse and transgender City employees. This document addresses many of the needs of these employees, but cannot anticipate every situation. The needs of each transitioning, gender

diverse and transgender employee must be assessed on a case-by-case basis. In all cases, the goals are to ensure equitable and respectful treatment of these employees; promote the safety, comfort, and health of these employees; eliminate barriers to their full workplace integration; and minimize stigmatization.

### Racial Equity Context

At the direction of Mayor Edward B. Murray, in October, 2016 the Seattle Department of Human Resources and the Seattle Office for Civil Rights formed an interdepartmental group to develop City of Seattle Gender Transition in the Workplace Guidelines. These guidelines were developed using resources from the Transgender Law Center and the U.S. Office of Personnel Management, stakeholder engagement with community members and the Racial Equity Outcome established by the committee. The Gender Transition in the Workplace Racial Equity Outcome envisions that:

*Transgender employees of color at the City of Seattle can transition with ease, respect, and dignity, and on the employee's terms.*

This Racial Equity Outcome is in line with the City's targeted universalism approach to equity. Targeted universalism is affirming of the needs of everyone. However, it focuses on the most marginalized individuals since, those who are less marginalized experience advances in equity and inclusion too, when barriers to equity and inclusion for the most marginalized individuals are removed. Focusing the outcome on transgender employees of color presumes equitable outcomes will ensue for all transgender employees.

## Core Definitions<sup>1</sup>

*Gender Identity* is a person's internal sense of gender. This may be different from what is traditionally associated with the person's physiology or assigned sex at birth.

*Gender Expression* is the external manifestation of characteristics and behaviors that are socially viewed as masculine, androgynous, feminine, or somewhere else along the spectrum. It is important to note that gender identity and expression are distinct from sexual orientation. Transgender and gender-nonconforming people can be gay, lesbian, bisexual, straight, questioning, queer, intersexual, pansexual or polysexual, for example, just like non-transgender people.

*Gender Non-Conforming* refers to a person who has gender characteristics and/or behaviors that do not conform to traditional or societal expectations. Keep in mind that these expectations can vary across cultures and have changed over time.

*Sexual Orientation* is a person's physical and/or emotional attraction to other people. Straight, gay and bisexual are some ways to describe sexual orientation.<sup>2</sup>

*Transgender*. A transgender individual is a person whose gender identity differs from their assigned sex at birth. A person who was assigned male at birth (AMAB), but identifies and lives as a woman is a *Transgender Woman*. A person who was assigned female at birth (AFAB) but identifies and lives as a man is a *Transgender Man*. Some transgender individuals do not identify with any gender and may consider themselves *Non-Binary*. Additionally, some transgender individuals may simply prefer to identify as women or men.

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<sup>1</sup> The City recognizes that definitions and understandings are constantly evolving and the City is committed to reviewing these definitions at the end of 2017. If you would like to provide input, please contact Loren Othon, Policy Analyst for the Gender Justice Project, Office for Civil Rights, at (206) 684-4528 or at [loren.othon@seattle.gov](mailto:loren.othon@seattle.gov).

*Transition* refers to the process of changing gender from the sex assigned at birth to one's gender identity. There are many ways to transition. For some people, it is a complex process that takes place over a long period, while for others it is a process that happens more quickly. Transition may include "coming out" (telling family, friends, and coworkers); changing name and/or sex on legal documents; or accessing medical treatment such as hormones and surgery. It is important to understand that each person's transition process may be different; however transgender employees should be given equal consideration and respect when creating their transition plan. Additionally, not all transgender people may find it necessary to transition.

## Guidelines For the Work Place

All employees – including transgender employees – have the right to be who they are and express their gender identity openly. City of Seattle departments should strive to create safe work environments in which employees are free to be who they are. Aspects of a safe workplace environment such as discrimination/harassment, privacy, use of name/pronouns and accommodations are outlined in greater detail below.

### Discrimination/Harassment

It violates City Personnel Rule 1.1 to discriminate in any way (including, but not limited to, failure to hire, failure to promote or unlawful termination) against an employee because of the employee's actual or perceived gender identity. It is also contrary to Personnel Rule 1.1 to retaliate against any person objecting to, or participating in or supporting another's objection to, gender identity discrimination or harassment in employment.

The City of Seattle is committed to creating a safe work environment for transitioning, gender diverse and transgender employees. Complaints of discrimination, harassment or violence based on gender identity or expression will receive timely attention, including, but not limited

to, investigating the incident, taking corrective action, and providing employees and staff with appropriate resources. Details on Personnel Rule 1.1 can be found in Appendix A.

## Privacy

All employees have the right to discuss their gender identity or expression openly, or to keep that information private.

Management and HR **staff may not disclose private information without employee consent** that reveals an employee's transitioning, gender non-conforming or transgender status. With employee consent, status may be shared only with individuals who truly need to know to do their jobs. Information about transition-related medical procedures or appointments must be treated as confidential medical information.

## Names/Pronouns

Transitioning, gender diverse and transgender employees have the right to be addressed by the name and pronoun corresponding to their gender identity. A court-ordered name or gender change is not required. As part of cultivating a safe and welcoming environment for transgender and gender diverse employees, employers can routinely ask all employees to share their personal pronouns during introductions at meetings or on name badges. This helps to standardize pronoun use amongst all employees and establish the desired workplace culture that is affirming to all gender expressions.

Intentional or persistent refusal to respect gender identity (for example, intentionally referring to an employee by a name or pronoun that does not correspond to the employee's gender identity) constitutes harassment and violate the City's Anti-Harassment and Discrimination policies. If you are unsure which pronoun a transitioning, gender non-conforming or transgender employee may use, politely ask how your coworker would like to be addressed.

## Official Records

If requested by an employee, the City will update the employee's official record to reflect a change in name or gender. Some records, such as those relating to payroll and retirement accounts, may require a legal name change before an employee's name can be changed. Most records, however, can be changed to reflect an employee's chosen name without proof of a legal name change.

The City will also make every effort to quickly update photographs at workplaces so the employee's gender identity and expression are accurately represented.

For assistance in updating City records or ID documents, contact your department's HR staff.

## Gender-Segregated Job Assignments

For gender-segregated job assignments, all employees will be classified and assigned in a manner consistent with their gender identity, not their sex assigned at birth.

## Locker Room and Restroom Accessibility

All employees have the right to use locker rooms and restrooms that correspond to their gender identity. Employees who have a need or desire for increased privacy, regardless of the underlying reason, will be provided:

- (Locker rooms) With a reasonable alternative such as a private changing area or use of the locker room that corresponds to their gender identity before or after other employees.
- (Restrooms) Access to a single-stall restroom, when available. No employee, however, shall be required to use such a restroom.



- If no single-stall restroom is available, employees should use the gender-segregated facility with which they feel most comfortable.

Transitioning, gender non-conforming and transgender employees will decide the most appropriate and safest option for them. Alternative arrangements for transitioning, gender non-conforming and transgender employees will be provided in a way that strives to keep their status confidential.

### Hiring Process

During the hiring process, hiring teams should consider the possibility that an applicant has transitioned. The name and gender used on application materials may be consistent with the applicant's present status, however background checks may reveal a previous name and/or gender. If this is the case, hiring managers should respectfully ask if the applicant has had a change in name, and confirm with the applicant which name and gender should be used during the hiring process.<sup>3</sup>

### Dress Codes

City of Seattle departments do not have dress codes that restrict employees' clothing or appearance based on gender. All employees have the right to comply with department dress codes in a manner consistent with their gender identity or gender expression.

### Health Insurance Benefits

The City provides medical coverage for gender transition services and procedures. These are covered with the same cost-sharing as any other medical service on all City-sponsored medical plans. Please contact the medical plans directly for more information. You may also review

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<sup>3</sup> Adapted from U.S. Office of Personnel Management: Guidance Regarding the Employment of Transgender Individuals in the Federal Workplace.

coverage available for transition-related care by contacting the City of Seattle's Benefits Group at (206) 615-4310 or find your department's Benefits and HR representative at:  
<http://www.seattle.gov/personnel/benefits/pubs/BenefitsandHRRepresentativeContactList.pdf>

### Leave Benefits

To review paid and unpaid leave available for transition-related care, contact the City of Seattle's Benefits Group at (206) 615-4310 or find your department's Benefits and HR representative at:  
<http://www.seattle.gov/personnel/benefits/pubs/BenefitsandHRRepresentativeContactList.pdf>

### Transitioning on the Job

Employees who transition on the job can expect the support of management and HR staff, who will work with employees to ensure a successful workplace transition.

- *Transitioning employees* may provide notification of a pending transition. In which case, the transitioning employee will work with HR staff to complete a transition plan that outlines steps for the employee, HR staff and Supervisors to take. When approached by an employee preparing to transition, HR should direct the employee to available resources for Transgender and gender nonconforming individuals.
- *HR staff* will help guide the workplace transition in close consultation with the employee.
- *Managers and Supervisors* will support and be respectful of employee privacy leading up to the transition and beyond. They will implement transition-related changes such as updating personnel and administrative records, and *at the request of the transitioning employee*, they will also set expectations for coworkers in facilitating a successful workplace transition.

Procedures for implementing transition-related workplace changes can be found in the [Transition Plan Template](#) section of this document.

Each gender transition is unique, and each employee should be afforded the right to transition in the manner and timeframe that suits their needs.

While each plan may differ, employees who are transitioning gender and the HR Staff and Supervisors supporting the employee, should consider the following steps:

1. Establish a date for the official start of the employee's transition in the workplace, when all records changes will take effect.
2. Identify the HR staff who will help guide the workplace transition (in close consultation with the employee) and the employee supervisor (who will support the employee and ensure a smooth transition for the employee).
3. Determine any dates of leave that may be needed for pre-scheduled medical care and/or legal appointments.
4. Determine who, if any, should be informed of the employee's transition, and how they will be notified.

### Communication and Training

An employee's transition should be treated with the same confidentiality given to any employee's significant, private life experiences, like hospitalizations, medical concerns, or other personal matters. Employees will vary in how they want to discuss or make public their transition. Some employees may have safety concerns, or may simply not want to "make a big deal" out of their transition. It is imperative that supervisors, HR staff and managers be conscious of these concerns and follow the employee's lead.

Communication to other City staff about an employee's transition should be determined by the employee and facilitated by the HR and supervisor team. The employee will decide how coworkers, management and other City employees should be made aware of the employee's transition. Some staff may need to know early in the process for planning purposes. The employee may also decide to notify some coworkers one-on-one before the transition is officially announced, if an official announcement is the decided course of action.

Training for supervisors, managers and other department staff should also be considered.<sup>4</sup> Other employees may lack understanding around gender identity, and providing facilitation and/or training can help ensure appropriate workplace behavior and communication regarding gender transition. Trainings should be scheduled and completed before the official transition date

The following steps should be followed when planning communication and training:

1. If necessary, schedule meetings needed to notify necessary staff. Use a non-identifying subject line such as "Check in" for the calendar appointment.
2. Determine training that will be offered to employees and schedule for shortly after the notification process. Please contact Loren Othon with the Office for Civil Rights at (206) 684-4528 to request training.

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<sup>4</sup> The City plans to develop gender identity training that will be available to *all* City employees and offered throughout the year. Until that training becomes available, training will be offered on a case-by-case basis for necessary staff. Please contact Loren Othon with the Office for Civil Rights at (206) 684-4528 in order to request case-by-case training in the interim.

## Updating Records

Identify required or requested updates to the employee's records. HR staff should work to implement the updates – **but be clear to those making the changes that the updates must not go live until the date agreed upon with the employee.**

Records that may need to be updated include:

Email address	yes / no
HRIS	yes / no
Employee directory listing	yes / no
ID badge photo	yes / no
Outlook photo	yes / no
Applicant record form	yes / no

Updating employee records may take longer in some systems than others; therefore, it is important that the HR representative check in regularly with those making record updates to ensure that changes are queued up for the transition date and communicates at least weekly with the employee that everything is on track with the records updates. This includes making sure that:

1. The employee has a new ID badge and photo if necessary;
2. All work documents have the appropriate name and gender, and verifying that these have been changed in all places the employee's name may appear.

## Appendix A – Personnel Rule 1.1

### 1.1.0 Authority

SMC 4.04.050 and subsequent revisions thereto, Rule-making Authority

SMC 4.80.020 and subsequent revisions thereto, Affirmative Action Plan—Policy

SMC Chapter 14.04 and subsequent revisions thereto, Fair Employment Practices Ordinance

Council Resolution 30291 and subsequent revisions thereto, Workplace Harassment Policy and Investigation Procedures

Mayor's Executive Order Affirming All Employees' Right to a Workplace Free from Harassment

Title VII, Civil Rights Act, 42 U.S.C. 2000e, et seq.

RCW 49.60, Discrimination—Human Rights Commission

### 1.1.1 Application of This Rule

- A. This Rule does not apply to employees of City departments that have alternative internal investigation procedures established by ordinance unless the affected employees are not subject to such internal investigation procedures.
- B. The provisions of this subchapter shall be applied to employees of the Seattle Municipal Court except where they conflict with any policy promulgated by the Court and/or General Court Rule 29.

### 1.1.2 Anti-Discrimination

It is the policy of the City of Seattle to provide a work environment for its employees that is free from discrimination and promotes equal employment opportunity for and equitable treatment of all employees. Any individual who believes he or she has been discriminated against in employment may make an internal complaint to any management representative or file a

complaint with the Seattle Office of Civil Rights, Washington State Human Rights Commission, or the Equal Employment Opportunity Commission.

### **1.1.3 Anti-Harassment**

Harassment of an individual is illegal conduct and a violation of this Rule. The City of Seattle will not tolerate harassment of its employees by coworkers, supervisors, Supervisors, officers of the City or from non-employees conducting business with the City.

### **1.1.4 Making a Harassment Complaint**

- A. Employees shall promptly report to any management representative any allegations or complaints of harassment. Where the complaint is against an elected official, it shall be filed with the Seattle Office of Civil Rights, the Ethics and Elections Commission, the Washington State Human Rights Commission, or the Equal Employment Opportunity Commission. Reporting a harassment complaint to or discussing a complaint with a management representative will result in an investigation.
  - 1. Employees may make informal inquiries about legal rights and agency procedures to the Seattle Office of Civil Rights, the Washington State Human Rights Commission, and the Equal Employment Opportunity Commission. Such inquiries do not constitute a harassment complaint.
  - 2. Employees may seek confidential assistance, counseling and referral through the City's Employee Assistance Program. Contacting the Employee Assistance Program for assistance, counseling and referral does not constitute a harassment complaint.
- B. A harassment complaint may be oral or written. Where possible, it should include the date(s) the incident(s) occurred, name(s) of the individual(s) involved, name(s) of witness(es), and a description of the incident(s). It may also include a statement of the desired remedy.
- C. Employees have the right to consult with or file a harassment complaint with the Seattle Office of Civil Rights, the Washington State Human Rights Commission, or the Equal Employment Opportunity Commission, or to pursue other legal action, in addition to their rights and responsibilities under this Rule.

- D. Retaliation against an employee who brings a complaint of harassment, reports allegations of harassment, or participates in an investigation of a harassment complaint is prohibited and shall not be tolerated. "Retaliation" for the purposes of administering Personnel Rule 1.1.4(D) means an adverse job action(s) taken against an employee because he or she has complained about harassment, given a statement about a harassment investigation, participated in a harassment investigation, or supported a harassment complainant.

### **1.1.5 Investigating Harassment Complaints**

- A. A management representative who is told or otherwise becomes aware that harassment may be occurring is obligated immediately to report the allegation or complaint to the alleged harasser's appointing authority.
  - 1. The appointing authority or designated management representative shall, as soon as practicable, notify the alleged harasser that he or she has been named in a harassment complaint and that it will be investigated.
  - 2. The appointing authority or designated management representative shall, as soon as practicable, assess the need to relocate either or both the complainant and the alleged harasser to another work unit, or to place either or both on administrative reassignment. The complainant shall not be given work or placed at a work site that is, in the judgment of the appointing authority or designated management representative, in any way less desirable than his or her current position and work site.
- B. The appointing authority or designated management representative shall designate a qualified City investigator or contract with an independent investigator to immediately commence an investigation of the complaint. If either the complainant or the alleged harasser raises a reasonable objection to the investigator assigned, the appointing authority or designated management representative shall attempt to reassign the investigation.
- C. The investigator shall complete his or her investigation as promptly as possible while ensuring that the investigation is fair, complete and impartial. It shall be the City's objective to complete all investigations within 90 days unless compelling circumstances require more time. The department shall regularly inform the complainant about the status of the investigation.



1. The investigation shall include interviews with the complainant and the alleged harasser and any other person(s) whom the investigator has reason to believe has information directly related to the complaint or the investigation thereof.
  2. The investigator shall assure compliance with any employee's right to union representation, including the right of the alleged harasser, who may reasonably believe that disciplinary action may be taken based upon his or her statements to the investigator or on the outcome of the investigation.
  3. The investigator shall maintain records of the investigation and shall prepare and provide a report of the investigation to the appointing authority. The appointing authority shall provide a written summary of the allegations and the investigation findings to the complainant and to the alleged harasser.
  4. In determining from the totality of the circumstances whether conduct is sufficiently severe or pervasive to create an intimidating, hostile or offensive work environment, the investigator shall consider the conduct from the perspective of a reasonable person of the alleged victim's race, color, religion, creed, sex, sexual orientation, gender identity, national origin, ancestry, age, disability, marital status, families with children status, veteran/military status or political ideology.
  5. To the extent that it does not hinder the investigation or the resolution of the complaint and is permitted under local, state and federal laws, management representatives and any independent investigator shall maintain the confidentiality of a harassment complaint.
- D. To avoid duplication of efforts or otherwise conserve City resources, the appointing authority or designated management representative may suspend or close an investigation for any reason that does not conflict with this Rule, including the reason that the complainant is actively pursuing his or her complaint in another forum or has agreed to participate in a mediation of the complaint.

### **1.1.6 Resolution of Harassment Complaints**

- A. If the investigation substantiates the complaint of harassment by a City employee, an

appropriate City official shall make a determination regarding the appropriate resolution, including disciplinary action. Before making the decision to impose disciplinary action, the appointing authority or designated representative shall ensure that the harasser has been given the opportunity to review the results of the investigation, has been told of the evidence obtained, and has had an opportunity to provide to the appointing authority or designated representative a response to the outcome of the investigation. The appointing authority or designated representative shall take the employee's response into account before taking final action on the complaint.

- B. In addition to any disciplinary action taken, substantiated complaints shall be noted in the employee's personnel file and referenced in his or her first performance evaluation following the conclusion of the investigation. The employee shall be ineligible for consideration for any performance pay program or any individual performance award program for which he or she might otherwise qualify, for a period of one year following the resolution of the complaint. The prohibition against performance pay or awards for the individual employee shall not adversely affect awards extended to work groups or teams on which the employee is a participant.
- C. If during the course of the investigation, the investigator determines that the allegation or complaint of harassment or discrimination was reported to a management representative, and that management representative failed to promptly report the allegation or complaint to the appointing authority or designated management representative, the appointing authority shall investigate and take appropriate action against the management representative, to include disciplinary action. In addition, the failure to report shall be noted in the management representative's personnel file and referenced in his or her first performance evaluation following completion of the investigation. The management representative shall forfeit for one year following resolution of the complaint any eligibility for individual performance pay or performance awards. Following determination of a substantiated complaint of harassment, the appropriate management representative should inquire of the complainant at a frequency and for whatever duration is necessary to ensure that the harassment has not resumed and that the complainant has not been retaliated against for making a complaint. After the investigation has been completed, the complainant continues to have an obligation to promptly report to any management representative any allegations or complaints of harassment.

## Appendix B - Seattle Municipal Code 14.04.010

This chapter shall constitute the "Seattle Fair Employment Practices Ordinance" and may be cited as such.

(Ord. 109116 § 1, 1980.)

**Cases—** Seattle fair employment practices ordinance was a valid exercise of City power and was not preempted by or in conflict with state law against discrimination. **Seattle Newspaper-Web, Etc. v. City of Seattle**, 24 Wn. App. 462, 604 P.2d 170 (1979).

14.04.020 - Declaration of policy.

- A. It is declared to be the policy of the City, in the exercise of its police powers for the protection of the public health, safety, and general welfare, and for the maintenance of peace and good government, to assure equal opportunity to all persons, free from restrictions because of race, color, sex, marital status, sexual orientation, gender identity, genetic information, political ideology, age, creed, religion, ancestry, national origin, honorably discharged veteran or military status or the presence of any sensory, mental or physical disability. The role of the Office for Civil Rights is to enforce the provisions of this chapter in furtherance of this policy.
- B. This chapter shall not be construed to endorse specific beliefs, practices or lifestyles.
- C. The provisions of this chapter shall apply to both private employers and the City, and shall be liberally construed for accomplishment of its policies and purposes; provided that, nothing in this chapter shall be construed so as to infringe upon the authority vested in the Civil Service Commission, the Public Safety Civil Service Commission, and City Departments by the City Charter.
- D. Nothing in this chapter shall be deemed to deny any person the right to institute any action or to pursue any civil or criminal remedy for the violation of such person's civil rights.
- E. To avoid duplication of efforts or otherwise conserve agency resources, the Director may suspend or close a case for any reason consistent with this chapter, including the reason that the case is being actively pursued in another forum.
- F. Remedies under this chapter should include such relief authorized by law as may be appropriate and reasonable to make the aggrieved person whole and eliminate the unfair practice.
- G. Nothing contained in this chapter is intended to be nor shall be construed to create or form the basis for any liability on the part of the City, or its officers, employees 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 the City by its officers, employees or agents.

(Ord. 123527, § 1, 2011; Ord. 123014, § 1, 2009; Ord. 119628 § 20, 1999; Ord. 118392 § 23, 1996; Ord. 112903 § 1, 1986; Ord. 109116 § 2, 1980.)

#### 14.04.030 - Definitions.

When used in this chapter, unless the context otherwise requires:

- A. "Charging party" means the person aggrieved by an alleged unfair employment practice or the person making a charge on another person's behalf, or the Director when the Director files a charge.
- B. "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, <sup>[3]</sup> or its successor ordinances, or any contractor, consultant, concessionaire or lessee.
- C. "Commission" means the Seattle Human Rights Commission.
- D. "Department" means the Office for Civil Rights of the City.
- E. "Director" means the Director of the Office for Civil Rights.
- F. "Disabled" means a person who has a disability.
- G. 1. "Disability" means the presence of a sensory, mental, or physical impairment that:
  - a. Is medically cognizable or diagnosable; or
  - b. Exists as a record or history; or
  - c. Is perceived to exist whether or not it exists in fact.
- 2. A disability exists whether it is temporary or permanent, common or uncommon, mitigated or unmitigated, or whether or not it limits the ability to work generally or work at a particular job or whether or not it limits any other activity within the scope of this chapter.
- 3. For purposes of this definition, "impairment" includes, but is not limited to:
  - a. Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitor-urinary, hemic and lymphatic, skin, and endocrine; or

- b. Any mental, developmental, traumatic, or psychological disorder, including but not limited to cognitive limitation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
  - 4. Only for the purposes of qualifying for reasonable accommodation in employment, an impairment must be known or shown through an interactive process to exist in fact and:
    - a. The impairment must have a substantially limiting effect upon the individual's ability to perform his or her job, the individual's ability to apply or be considered for a job, or the individual's access to equal benefits, privileges, or terms or conditions of employment; or
    - b. The employee must have put the employer on notice of the existence of an impairment, and medical documentation must establish a reasonable likelihood that engaging in job functions without an accommodation would aggravate the impairment to the extent that it would create a substantially limiting effect.
  - 5. For purposes of (4) of this subsection, a limitation is not substantial if it has only a trivial effect.
- H. "Genetic Information" means any information regarding inherited characteristics that can be derived from a DNA-based or other laboratory test, family history, or medical examination. "Genetic information" for purposes of this chapter, does not include: (1) Routine physical measurements, including chemical, blood, and urine analysis, unless conducted purposefully to diagnose genetic or inherited characteristics; and (2) results from tests for abuse of alcohol or drugs.
- I. "Discrimination," "discriminate," and/or "discriminatory act" means any act, by itself or as part of a practice, which is intended to or results in different treatment or differentiates between or among individuals or groups of individuals by reason of race, color, age, sex, marital status, sexual orientation, gender identity, genetic information, political ideology, creed, religion, ancestry, national origin, honorably discharged veteran or military status, or the presence of any disability.
- J. "Employee" means any person employed by, or applying for employment with, an employer, and shall include traditional employees, temporary workers, and part-time employees.
- K. "Employer" means any person who has one or more employees, or the employer's designee or any person acting in the interest of such employer.

- L. "Employment agency" means any person undertaking with or without compensation to procure opportunities to work or to procure, recruit, refer, or place individuals with an employer or in employment.
- M. "Gender identity" means a person's gender-related identity, appearance, or expression, whether or not traditionally associated with one's biological sex or one's sex at birth, and includes a person's attitudes, preferences, beliefs, and practices pertaining thereto.
- N. "Labor organization" means any organization or employee group or association in which employees participate and which exists for the purpose of (1) collective bargaining for or on behalf of employees, (2) dealing with employers concerning grievances, labor disputes, terms or conditions of employment, or (3) other mutual aid or protection of such employees in relation to their employment.
- O. "Marital status" means the presence or absence of a marital relationship and includes the status of married, separated, divorced, engaged, widowed, single or cohabitating.
- P. "Party" includes the person charging or making a complaint or upon whose behalf a complaint is made alleging an unfair employment practice, the person alleged or found to have committed an unfair employment practice and the Office for Civil Rights.
- Q. "Person" includes one or more individuals, 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 or more natural persons, and further includes any department, office, agency or instrumentality of the City.
- R. "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.
- S. The term "reasonable accommodation" may include:
  - 1. Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

2. Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.
- T. "Respondent" means any person who is alleged or found to have committed an unfair employment practice prohibited by this chapter.
- U. The terms "because of sex," "on the basis of sex," or "by reason of sex" include, but are not limited to, because of or on the basis of or by reason of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in this chapter shall be interpreted to permit otherwise.
- V. "Sexual orientation" means actual or perceived male or female heterosexuality, bisexuality, or homosexuality and includes a person's attitudes, preferences, beliefs and practices pertaining thereto.
- W. "Honorably discharged veteran or military status" means:
1. A veteran, as defined in RCW 41.04.007; or
  2. An active or reserve member in any branch of the armed forces of the United States, including the national guard, coast guard, and armed forces reserves.
- X. "Service animal" means an animal that provides medically necessary support for the benefit of an individual with a disability.

(Ord. [124829](#), § 2, 2015; Ord. 123527, § 2, 2011; Ord. 123014, § 2, 2009; Ord. 119678 § 1, 1999; Ord. 119628 § 5, 1999; Ord. 118392 § 24, 1996; Ord. 112903 § 2, 1986; Ord. 109116 § 3, 1980.)

Footnotes:

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**Editor's note**— Ordinance [103387](#) is codified in Chapter 3.110 of this Code.

Subchapter II - Unfair Employment Practices and Exclusions

14.04.040 - Unfair employment practices designated.

It is unfair employment practice within the City for any:

- A. Employer to discriminate against any person with respect to hiring, tenure, promotion, terms, conditions, wages or privileges of employment, or with respect to any matter related to employment;
- B. Employer, employment agency, or labor organization to discriminate by establishing, announcing or following a policy of denying or limiting employment or membership opportunities to any person;
- C. Employer, employment agency, or labor organization to print, circulate, or cause to be printed, published or circulated, any statement, advertisement, or publication relating to employment or membership, or to use any form of application therefor, which indicates any preference, limitation, specification, or discrimination based upon race, color, sex, marital status, sexual orientation, gender identity, genetic information, political ideology, age, creed, religion, ancestry, national origin, honorably discharged veteran or military status or the presence of any sensory, mental or physical handicap; provided that, nothing in this chapter shall prevent an employer from ascertaining and recording data as to race, color, sex, marital status, sexual orientation, gender identity, political ideology, age, creed, religion, ancestry, national origin, honorably discharged veteran or military status or the presence of any sensory, mental or physical handicap whether before or after employment, for the purpose of making reports specifically required by agencies of federal, state or local government for the purpose of eliminating and preventing discrimination or overcoming its effects, or for other purposes authorized by law or the rules and regulations of Washington State Human Rights Commission, the Equal Employment Opportunities Commission or the Department;
- D. Employment agency to discriminate against any person with respect to any reference for employment, assignment as to job classification or otherwise;
- E. Labor organization to discriminate against any person by limiting, segregating, or classifying its membership in any way that would:
  - 1. Deprive or tend to deprive any person of employment opportunities,
  - 2. Limit any person's employment opportunities or otherwise adversely affect such person's status as an applicant for employment or as an employee,
  - 3. Adversely affect the wages, hours, or conditions of employment of any person;



- F. Employer, employment agency, or labor organization to penalize or discriminate in any manner against any person because they opposed any practice forbidden by this chapter or because they made a charge, testified or assisted in any manner in any investigation, proceeding, or hearing initiated under the provisions of this chapter;
- G. Employer, employment agency, labor organization, or any joint labor-management committee controlling apprenticeship or other training or retraining programs to discriminate against any person with respect to admission to or participation in any guidance program, apprenticeship training program or other occupational training program;
- H. Publisher, firm, corporation, organization, or association printing, publishing or circulating any newspaper, magazine or other written publication, to print or cause to be printed or circulated any advertisement with knowledge that the same is in violation of Section 14.04.040 C, or to segregate and separately designate advertisements as applying only to men or women unless such designation is a bona fide occupational qualification reasonably necessary to the particular business or employment;
- I. Person to:
  - 1. Knowingly and wilfully aid, abet, initiate, compel, or coerce the doing of any act declared in this chapter to be an unfair employment practice; provided that, this subparagraph shall have no application to any act declared to be an unfair employment practice under subsection H of this section,
  - 2. Obstruct or prevent any person from complying with the provisions of this chapter,
  - 3. Attempt directly or indirectly to commit any act declared by this section to be an unfair employment practice.

(Ord. 123527, § 3, 2011; Ord. 123014, § 3, 2009; Ord. 119628 § 6, 1999; Ord. 109116 § 4, 1980.)

#### 14.04.050 - Exclusions from unfair practices.

- A. Notwithstanding any other provision of Section 14.04.040, it is not an unfair employment practice under this chapter for an employer, employment agency, or labor organization to discriminate in those instances where religion, sex, national origin, or age is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.

- B. Notwithstanding any other provisions of this chapter, it is not an unfair employment practice under this chapter to act to accomplish the purposes and goals of the affirmative action plan of an employer, employment agency, or labor organization.
- C. The provisions of Section 14.04.040 insofar as they declare discrimination on the basis of age to be an unfair employment practice shall not be applicable with respect to individuals who are under forty (40) years of age.
- D. The provisions of Section 14.04.040 insofar as they declare discrimination on the basis of the presence of any sensory, mental or physical handicap to be an unfair employment practice, shall not apply if the particular disability prevents the proper performance of the particular worker involved.
- E. Nothing in this chapter shall be construed to protect criminal conduct.
- F. Notwithstanding any provision of Sections 14.04.030 and 14.04.040, it is not an unfair practice under this chapter for an employer, with a demonstrated security or public safety need, to discriminate on the basis of participation in activities which involve the use of force or violence or advocate or incite force or violence.

(Ord. 118392 § 25, 1996; Ord. 112903 § 3, 1986; Ord. 109116 § 5, 1980.)

### Subchapter III - Administration and Enforcement

#### 14.04.060 - Powers and duties of Department.

- A. The Office for Civil Rights shall receive, investigate, and pass upon charges alleging unfair practices as defined by this chapter, 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 chapter; and shall have such powers and duties in the performance of these functions as are defined in this chapter and otherwise necessary and proper in the performance of the same and provided for by law. The Department shall further assist the Commission and other City agencies and departments upon request in effectuating and promoting the purposes of this chapter.
- B. The Director is authorized and directed to promulgate rules consistent with this chapter and the Administrative Code. <sup>[4]</sup>

(Ord. 118392 § 26, 1996; Ord. 109116 § 6(A), 1980.)

Footnotes:

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**Editor's note**— The Administrative Code is codified in Chapter 3.02 of this Code.

#### 14.04.070 - Powers and duties of Commission.

The Seattle Human Rights Commission shall study, advise, and make recommendations for legislation on policies, procedures, and practices which would further the purposes of this chapter. The Commission shall hear appeals from the Director's determinations of no reasonable cause and, in cases involving respondents who are City departments, hear appeals from determinations of reasonable cause and the orders relating to the remedy therefor. It shall, where appropriate and necessary, in its judgment, hear and determine complaints jointly with the Hearing Examiner as provided in Sections 14.04.170 and 14.04.180. The Commission shall have such powers and authority in carrying out these functions as are provided for by this chapter or otherwise established by law.

(Ord. 109116 § 6(B), 1980.)

#### 14.04.080 - Charge filing.

- A. A charge alleging an unfair employment practice shall be in writing on a form or in a format determined by the Department, and signed under oath or affirmation by or on behalf of a charging party before the Director, one of the Department's employees, or any other person authorized to administer oaths, and shall describe the unfair employment practice complained of and should include a statement of the dates, places and circumstances and the persons responsible for such acts and practices.
- B. Whenever charges are made by or on behalf of a person claiming to be aggrieved, the person making the charge must provide the Director with the name, address and telephone number of the individual on whose behalf the charge is made. Thereafter, the Director shall verify the authorization of such charge by the person on whose behalf the charge is made and upon the request of such person may keep his or her identity confidential.
- C. A charge 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.

- D. A charge alleging an unfair employment 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 employment practice.

(Ord. 118392 § 27, 1996; Ord. 109116 § 7(A), 1980.)

#### 14.04.090 - Charge—Time for filing.

- A. Charges filed under this chapter must be filed within 180 days after the occurrence of the alleged unfair employment practice with the Office for Civil Rights.
- B. For purposes of this chapter, an unfair employment practice occurs, with respect to discrimination in compensation in violation of this chapter, when a discriminatory compensation decision or other practice is adopted, when an individual becomes subject to a discriminatory compensation decision or other practice, or when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.

In addition to any relief authorized by this chapter, liability may accrue and an aggrieved person may obtain relief as provided in this chapter, including recovery of back pay for up to two years preceding the filing of the charge, where the unlawful employment practices that have occurred during the charge filing period are similar or related to unlawful employment practices with regard to discrimination in compensation that occurred outside the time for filing a charge.

(Ord. 123527, § 4, 2011; Ord. 118392 § 28, 1996; Ord. 109116 § 7(B), 1980.)

#### 14.04.100 - Charge—Amendments.

The charging party or the Department may amend a charge 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 charge. For jurisdictional purposes, such amendments shall relate back to the date the original charge was first filed. The charging party may also amend a charge to include allegations of additional unrelated discriminatory acts and/or retaliation which arose after filing of the original charge. 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 the Department's issuance of findings of fact and a determination with respect to the original charge. Such amendments may be made at any time during the investigation of the original charge so long as the

Department will have adequate time to investigate such additional allegations and the parties will have adequate time to present the Department with evidence concerning such allegations before the issuance of findings of fact and a determination.

(Ord. 118392 § 29, 1996; Ord. 112903 § 4, 1986; Ord. 109116 § 7(C), 1980.)

#### 14.04.110 - Charge—Notice and investigation.

- A. The Director shall cause to be served or mailed by certified mail, return receipt requested, a copy of the charge on the respondent within twenty (20) days after the filing of the charge and shall promptly make an investigation thereof.
- B. The investigation shall be directed to ascertain the facts concerning the unfair practice alleged in the charge, and shall be conducted in an objective and impartial manner.
- C. During the investigation the Director shall consider any statement of position or evidence with respect to the allegations of the charge which the charging party or the respondent wishes to submit. The Director shall have authority to 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 the taking of interrogatories and oral depositions.
- D. 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 may have their legal counsel present if desired.

(Ord. 118392 § 30, 1996; Ord. 109116 § 8, 1980.)

#### 14.04.120 - Findings of fact and determination of reasonable cause or no reasonable cause.

- A. 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.

- B. The findings of fact and determination shall be furnished promptly to the respondent and charging party.
- C. 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 or in response to an order by the Human Rights Commission after an appeal taken pursuant to Section 14.04.130 or 14.04.160; 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.

(Ord. 118392 § 31, 1996; Ord. 112903 § 5, 1986; Ord. 109116 § 9, 1980.)

#### 14.04.130 - Determination of no reasonable cause—Appeal from and dismissal.

If a determination is made that there is no reasonable cause for believing an unfair employment practice under this chapter has been committed, the charging party shall have the right to appeal such determination to the Commission within 30 days of the date the determination is signed by the Director by filing a written statement of appeal with the Commission. The Commission shall promptly deliver a copy of the statement to the Department and respondent and shall promptly consider and act upon such appeal by either affirming the Director's determination or, if the Commission believes the Director should investigate further, remanding it to the Director with a request for specific further investigation. In the event no appeal is taken or such appeal results in affirmance or if the Commission has not decided the appeal within 90 days from the date the appeal statement is filed, the determination of the Director shall be final and the charge deemed dismissed and the same shall be entered on the records of the Department.

(Ord. 123864, § 1, 2012; Ord. 118392, § 32, 1996; Ord. 109116, § 10, 1980.)

#### 14.04.140 - Determination of reasonable cause—Conciliation and settlement of cases involving all respondents except City departments.

- 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. Conditions of

settlement may include (but are not limited to) the elimination of the unfair employment practice, hiring, reinstatement or upgrading with or without back pay, lost benefits, attorney's fees, admittance or restoration to membership in a labor organization, admittance to participation in a guidance, apprentice training or retraining program or such other action which will effectuate the purposes of this chapter, 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). Any settlement agreement shall be reduced to writing and signed by the Director and the respondent. 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.

- B. In case of failure to reach an agreement and of 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 investigatory file, including the charge and any and all findings made, to the City Attorney for further proceedings and hearing under this chapter pursuant to Section 14.04.170.

(Ord. 117615 § 1, 1995; Ord. 112903 § 7, 1986; Ord. 109116 § 11, 1980.)

14.04.150 - Determinations of reasonable cause—Conciliation, settlement and conclusion of cases involving City departments as respondents.

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 employment practice has been committed by respondent and is dispositive of this issue for all future proceedings under this chapter, unless appealed, reversed and remanded as provided in this chapter.
- B. Within sixty (60) days of a determination of reasonable cause, the Director shall confer with the parties and determine an appropriate remedy, which remedy may include (but is not limited to) hiring, reinstatement or upgrading with or without back pay, lost benefits, attorney's fees, admittance to participation in a guidance, apprentice training or retraining program, or such other action as will effectuate the purposes of this chapter, 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 the Department, releasing the City from further liability for acts giving rise to the charge 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 before or after any appeal includes a monetary payment which exceeds the sum of Five Thousand Dollars (\$5,000.00), the charge 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 Five Thousand Dollars (\$5,000.00) 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.

(Ord. 117615 § 2, 1995; Ord. 112903 § 7, 1986; Ord. 109116 § 12, 1980.)

14.04.160 - Appeals to the Commission from determinations of reasonable cause and orders of excess involving City departments as respondents.

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

- A. The charging party or respondent may appeal the Director's order and determination of reasonable cause to the Commission within thirty (30) days of the Director's order by filing a written statement of appeal with the Commission. Such statement shall state specifically the grounds on which it is based and the reasons the determination or order or both is in error.
- B. The Commission shall promptly mail a copy of the statement to the Department and to the other party and shall promptly consider and act upon such appeal by either affirming the Director's determination or order or remanding it to the Director with appropriate instructions.
- C. The filing of an appeal shall stay the enforcement of any remedy provided for in the Director's determination or order during the pendency of the appeal.



- D. In such appeal, the Commission shall consider only the record submitted to it by the Department and written statements of positions by the parties involved and, in its discretion, oral presentation. The Commission shall reverse the Director's determination or order only upon a finding that it is clearly erroneous.

(Ord. 117615 § 3, 1995: Ord. 109116 § 13, 1980.)

#### 14.04.170 - Complaint and hearing of cases with all respondents except City departments.

- A. Following submission of the investigatory file from the Director in cases involving all respondents under Section 14.04.140, the City Attorney shall prepare a complaint against such respondent relating to the charge and facts discovered during the investigation thereof and prosecute the same in the name and on behalf of the Department and the City at a hearing therefor before the Hearing Examiner sitting alone or with representatives of the Commission as provided in this chapter and to appear for and represent the interests of the Department 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 the Department, charging party and the respondent.
- B. 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 charging party.
- C. 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.
- D. Upon the filing of the complaint, the Hearing Examiner shall promptly establish a date for the hearing of such complaint and give notice thereof to the Commission, the City Attorney and respondent, and shall thereafter hold a public hearing on the complaint, which hearing shall commence 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.
- E. After the filing of a complaint with the Hearing Examiner, it may be amended only with the permission of the Hearing Examiner, which permission shall be granted when justice will be served thereby and all parties are allowed time to prepare their case with respect to additional or expanded charges which they did not and could not have reasonably foreseen would be in issue at the hearing.

- F. 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 from a list approved by the Commission, sitting alone or with representatives of the Commission if any are designated. 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). <sup>[5]</sup>
- G. The Commission, within thirty (30) days after notice of the date of hearing from the Hearing Examiner, at its discretion, may appoint two (2) of its members who have not otherwise been involved in the charge, investigation, fact finding, or other resolution and proceeding on the merits of the case, who have not formed an opinion on the merits of the case, and who otherwise have no pecuniary, private or personal interest or bias in the matter, to hear the case with the Hearing Examiner. If the Commission has designated representatives they shall each have an equal vote with the Hearing Examiner, except the Hearing Examiner shall be the chairperson of the panel and make all evidentiary rulings. Should a question arise as to previous involvement, interest or bias of an appointed Commissioner, the Hearing Examiner shall resolve the issue in conformance with the law on the subject.

(Ord. 109116 § 14, 1980.)

Footnotes:

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**Editor's note**— The Administrative Code is codified in Chapter 3.02 of this Code.

#### 14.04.180 - Decision and order

- A. Within 30 days after conclusion of the hearing, the Hearing Examiner (or the Examiner and Commissioners as the case may be) shall prepare a written decision and order, file it as a public record with the City Clerk, and provide a copy to each party of record and to the Department.
- B. Such decision shall contain a brief summary of the evidence considered and shall contain 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 (or a majority of the panel composed of the Examiner and Commissioners), determines that a respondent has committed an unfair employment practice under

this chapter, the Hearing Examiner (or panel majority) 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 Chapter 14.04, and secure compliance therewith, including but not limited to hiring, reinstatement, or upgrading with or without back pay, lost benefits, attorney's fees, admittance or restoration to membership in a labor organization, admittance to participation in a guidance, apprentice training or retraining program, or such other action which will effectuate the purposes of this Chapter 14.04, including action which could be ordered by a court, except that damages for humiliation and mental suffering shall not exceed \$10,000.00. Back pay liability shall not accrue from a date more than two years prior to the initial filing of the charge.

- 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.

(Ord. 123899, § 12, 2012; Ord. 117615 § 4, 1995; Ord. 112903 § 8, 1986; Ord. 109116 § 15, 1980.)

#### 14.04.185 - Enforcement by private persons.

- A. Any person who claims to have been injured by an unfair employment practice may commence a civil action in Superior Court or any other court of competent jurisdiction, not later than three (3) years after the occurrence of the alleged unfair employment practice or ninety (90) days after a determination of reasonable cause by the Director, whichever occurs last, to obtain appropriate relief with respect to such unfair employment practice. In an action brought under this section, the court having jurisdiction may, upon written findings by the judge that the action was frivolous and advanced without reasonable cause, require the nonprevailing party to pay the prevailing party the reasonable expenses, including attorneys fees, incurred in opposing such action pursuant to RCW 4.84.185.
- B. A complaint may be filed under this section whether or not an administrative charge has been filed under SMC Section 14.04.090, and without regard to the status of such charge, but if the Department has obtained a pre-finding or post-finding settlement or conciliation agreement with the consent of the charging party, no action may be filed under this section with respect to the alleged unfair employment 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.

- C.
  1. Subject to the provisions of subsection C2, upon the filing of a civil action involving the same claim or arising from the same facts and circumstances, whether under this subchapter or similar law, a complaint of an unfair employment practice may be administratively closed by the Director.
  2. In the event that a court dismisses a private cause of action on grounds that would not preclude pursuit of a charge under this subchapter, the charging party may request, within ninety (90) days of the entry of the Court's order of dismissal, that the Department reopen a previously filed charge. Upon such request, the Director may reopen a case that was administratively closed upon the filing of a civil action. If the Department closes a case based on a "no reasonable cause" finding, the case shall not be reopened except as provided through appeal pursuant to SMC Section 14.04.030.
  3. No complainant or aggrieved person may secure relief from more than one (1) governmental agency, instrumentality or tribunal for the same harm or injury.
  4. Where the complainant or aggrieved person elects to pursue simultaneous claims in more than one (1) 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.
  5. No civil action may be commenced under this section with respect to an alleged unfair employment 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 thirty (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.
- D. In a civil action under this section, if the court, or jury, finds that an unfair employment practice has occurred, the court may grant such relief as may be awarded by the hearing examiner under this chapter or is authorized by the Washington Law Against Discrimination, Chapter 49.60 RCW, as amended. Damages awarded under this section for humiliation and mental suffering are not subject to the limitation of SMC Section 14.04.140 A or SMC Section 14.04.150 B.

- E. Upon time 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 SMC Sections 14.04.140 and 14.04.180. Such intervention shall not be permitted in an action in which the City is a defendant.
- F. It is the intent of The City of Seattle, in enacting this section, to provide private judicial remedies for violations of this chapter that are as expansive as possible consistent with the powers granted by the Constitution and Laws of The State of Washington. In the event that any provision or aspect of this section is adjudicated to be invalid or unenforceable under applicable law, the validity or enforceability of the remaining provisions shall be unaffected.

(Ord. 119678 § 2, 1999; Ord. 119379 § 1, 1999.)

#### 14.04.190 - Construction with other laws.

Nothing in this chapter shall be construed to invalidate or restrict or deny any right or remedy any person may have under state or federal law or preclude any cause of action in court otherwise provided for the violation of any person's civil rights; nor shall this chapter be construed to preclude any person aggrieved from seeking judicial review of any final administrative decision or order made under this chapter affecting such person.

(Ord. 109116 § 16, 1980.)

#### 14.04.200 - Cooperative agreements.

Nothing in this chapter shall be interpreted to prevent the receiving, referring, or other processing of complaints, in accordance with a cooperative agreement with the Washington State Human Rights Commission, the Equal Employment Opportunity Commission or with other agencies concerned with the enforcement of laws against discrimination.

(Ord. 109116 § 17, 1980.)

#### 14.04.210 - Violation—Penalty.

It is unlawful for any person to wilfully engage in an unfair practice under this chapter or wilfully resist, prevent, impede or interfere with the Director or Hearing Examiner in the performance of their duties under this chapter, 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 (Ordinance 102843, as amended), <sup>16</sup> and any person convicted thereof may be punished by a civil fine or forfeiture not to exceed Five Hundred Dollars (\$500).

(Ord. 109116 § 18, 1980.)

Footnotes:

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**Editor's note**— Chapter 12A.01 of the Criminal Code is codified in Chapter 12A.02 of this Code; Chapter 12A.02 is codified in Chapter 12A.04 of this Code.

14.04.220 - Application to pending charges and complaints.

The procedures for administration and enforcement under this chapter shall apply to charges pending which have not had a date certain set for hearing as of the effective date of this ordinance. <sup>17</sup> However, this section shall not be construed to invalidate any administrative action taken or determinations and orders made on pending charges because of the procedures provided by this chapter.

(Ord. 109116 § 20, 1980.)

Footnotes:

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**Editor's note**— Ord. 109116 became effective July 17, 1980.