**Proposed Changes to City of Seattle Human Rights Ordinances**

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Members of the public have until Wednesday, July 28, 2010 to comment on these proposed changes. You can send comments via e-mail to nolan.lim@seattle.gov or in writing to:

Seattle Office for Civil Rights

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Seattle, WA 98104-1627

Attn: Nolan Lim.

Comments from the public will be used to evaluate the impacts of the proposed changes, and will shape the final amendments to be considered by Seattle City Council in August.

Please note:

* ~~Strikethrough~~ text indicates current language proposed to be removed from the ordinance.
* Underlined text indicates new language proposed to be added to the ordinance.

**Change #1:
Update definition of disability to reflect the Washington Law Against Discrimination (WLAD) definition of disability**

**SMC 14.04.030**

(F) “Disabled” means a person who has a disability.

(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.

**SMC 14.06.020**

I. ~~"Disability" means the condition of being disabled.~~“Disabled” means a person who has a disability.

~~J. "Disabled" means, with respect to a person:~~

~~1. Having a physical or mental impairment which substantially limits one or~~

~~more of such person's major life activities, either temporarily or~~

~~permanently; or~~

~~2. Having a record of having such impairment; or~~

~~3. Being regarded as having such an impairment, but such term does not~~

~~include current illegal use of a controlled substance (as defined in section~~

~~102 of the Controlled Substances Act as of the date of passage of this~~

~~section (21 U.S.C. 802)).~~

(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.

**SMC 14.08.020**

~~J. "Disability" means the condition of being disabled.~~

J. “Disabled” means a person who has a disability.

~~K. "Disabled" means, with respect to a person:~~

~~1. Having a physical or mental impairment which substantially limits one (1)~~

~~or more of such person's major life activities, either temporarily or~~

~~permanently, or~~

~~2. Having a record of having such an impairment, or~~

~~3. Being regarded as having such an impairment, but such term does not~~

~~include current illegal use of a controlled substance (as defined in section~~

~~102 of the Controlled Substances Act as of the date of passage of this~~

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(a) Is medically cognizable or diagnosable; or

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(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.

**Change #2: Define Service Animals to include companion animals
for 14.08 (fair housing), 14.04 and 14.06**

SOCR proposes adding the following language as a new definition in SMC 14.08.020 (fair housing), and possibly also to SMC 14.04.030 and 14.06.020. SMC Title 14 currently refers to “trained guide dog or service animal” in several places but never explicitly defines the term “service animal.” Adding a definition will clarify the multiple references within SMC.

“Service animal” means:

(a) a therapeutic companion animal, or

(b) an animal that does work, performs tasks or provides medically necessary support for the benefit of an individual with a disability.

**Change #3: Include “pregnancy” as part of sex discrimination
to comply with the Pregnancy Discrimination Act**

SOCR proposes adding the following as a new definition to SMC 14.04.030 (based on 42 U.S.C. § 2000e(k)).

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.

**Change #4: Extend the statute of limitations for HUD cases
to one year to be equivalent to the Fair Housing Act**

SOCR proposes changing SMC 14.08.110 as follows:

Charges filed under this chapter must be filed with the Department within one ~~hundred eighty (180) days~~ year after the alleged unfair practice has occurred or terminated.

SOCR proposes changing SMC 14.08.120(B) as follows:

The charging party may amend a charge to include allegations of retaliation which arose after the filing of the original charge. Such amendment must be filed within one ~~hundred eighty (180) days~~ year after the occurrence of the retaliation, and prior to the Department's issuance of findings of fact and 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 the additional allegations and the parties will have adequate time to present the Department with evidence concerning the additional allegations before the issuance of findings of fact and a determination.

**Change #5: Add an explicit section to SMC 14.04 that specifies duties to reasonably accommodate and a bona fide occupational qualification (BFOQ) section**

SOCR proposes adding the following new section as SMC 14.04.035:

(A) For purposes of this chapter, an employer’s failure to make reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee shall constitute discrimination, unless such employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity.

(B) For purposes of this chapter, an employer’s denial of employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability shall constitute discrimination if such denial is based on the need of such employer to make reasonable accommodation to the physical or mental impairments of the employee or applicant.

SOCR proposes adding the following definitions to SMC 14.04.030:

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.

The term “qualified individual” means an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this chapter, consideration shall be given to the employer’s judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

**Change #6: Clarify SMC 14.08.070(B) that unfair advertising includes “statements,” because the Fair Housing Act (FHA) includes statements**

SOCR proposes changing SMC 14.08.070(B) as follows:

Publish, print, circulate, issue or display or cause to be published, printed, circulated, issued or displayed, any communication, notice, advertisement, statement, or sign of any kind relating to a real estate transaction or listing of real property which indicates directly or indicates an intention to make any preference, limitation or specification based on race, color, creed, religion, ancestry, national origin, age, sex, marital status, parental status, sexual orientation, gender identity, political ideology, honorably discharged veteran or military status, the participation in a Section 8 program, the presence of a disability, or the use of a trained dog guide or service animal by a disabled person.

**Change #7: Incorporate the federal Lilly Ledbetter Fair Pay Act
to clarify when a charge can be filed for discriminatory pay issues**

SOCR proposes adding the following language to SMC 14.04.090:

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.

**Change #8: Include “Genetic Information” as a protected class in SMC 14.04 to correspond with the protections of the federal Genetic Information Non-Discrimination Act (GINA)**

Seattle Municipal Code currently includes no prohibitions that would prevent employers from discriminating against individuals based on genetic information. The federal government recently passed GINA in an effort to prevent employment discrimination based on genetic information. Several states including Washington make it illegal to use genetic tests as a condition of employment. SOCR proposes to amend SMC 14.08 to include language that makes it an unlawful practice for employers to discriminate against employees or potential employees based on genetic information:

Proposed Language for 14.04.030:

(F) "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, political ideology, creed, religion, ancestry, national origin, genetic information, honorably discharged veteran or military status, or the presence of any sensory, mental or physical handicap.

(G) “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.

Proposed Language for 14.04.040(C)

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 therefore, 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, 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 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.