



# Seattle City Council

## Memorandum

Date: May 22, 1986

To: City Councilmembers

From: Jeanette Williams

Subject: Summary of Decisions of Committee Regarding Proposed Human Rights Ordinances

MAY 22 1986

This memorandum briefly summarizes the issues and decisions made by the Committee when it considered recommendations of the Human Rights Review Panel (HRRP) to amend the City's Fair Employment and Open Housing Ordinances. Attached to this memorandum you will find work sheets which show the recommendations of the Human Rights Review Panel and its reasoning for the recommendations. On the right hand facing page of each worksheet you will find the proposed amendments of the City Council Committee, its reasoning for the amendments and the Committee's reasons for not recommending some of the HRRP amendments.

Briefly the issues and recommendations are as follows:

1. City Attorney Discretion. Do not delete language requiring the City Attorney to file a written statement of reasons for not filing a complaint or proceeding with a case.
2. Do not include the following proposed new remedies in the ordinances:
  - A. Back pay computed without deducting interim earnings;
  - B. Separate non-nominal damages for violation of civil rights;
  - C. Punitive damages;
  - D. Unlimited damages for mental and physical anguish, pain, suffering, embarrassment, humiliation and indignity.
3. Add the following remedies to the ordinances:
  - A. Attorney's fees;
  - B. Damages for humiliation and mental suffering up to \$1,000;
  - C. Award of up to \$1,000 for violation of the right to be free from discrimination in real estate transactions.
4. The Committee divided over the question as to whether the charging party should be permitted to amend the original charge to include subsequent acts of discrimination or retaliation.
5. The Committee was divided over the question of whether the charging party should be required to approve all predetermination settlement agreements.

6. The Committee recommends that the Director should not be permitted to change findings in a case without the consent of the parties except to correct clerical or typographical errors.
7. The Committee recommends changing the definition of political ideology.
8. The Committee recommends changing the definition of sexual orientation.
9. The Committee recommends defining "marital status."
10. The Committee recommends against attempting to give the trial courts jurisdiction over violation of the ordinances.
11. The Committee recommends against adding language which would permit charging parties to pursue remedies simultaneously in several forums.
12. The Committee recommends adding language to clarify the intent that the role of the Human Rights Department is to end discrimination and to enforce public policy. This clarifies the intent that HRD directs the course of a case even if the charging party disagrees.
13. The Committee recommends including language excluding certain conduct from protection of the ordinances.
14. The Committee recommends including sensory, mental or physical handicap as a protected class in the Open Housing Ordinance.
15. The Committee recommends adding new language to the Open Housing Ordinance which would make it an unfair practice for the owner or landlord to unreasonably prohibit modifications needed by handicapped tenants.

If you have any questions with regard to the proposed recommendations, please contact my office.

Thank you.

JW:ec

UNIVERSITY OF WASHINGTON  
SEATTLE, WASHINGTON 98105

School of Law  
Condon Hall

February 7, 1985

Jeanette Williams  
Chair, City Operations Committee  
Seattle City Council

Dear Councilmember Williams:

I am pleased to present to you the report and recommendations of the Human Rights Ordinance Review Panel. I will briefly summarize the history and work of the panel.

Early in 1984 a number of organizations and individuals expressed concern over administrative rules adopted in March by the Human Rights Department.

The Ad Hoc Committee for Fair Employment and Open Housing which represents several of those groups, recommended that the City Council enact legislation which would require the Human Rights Department to modify its rules. The Ad Hoc Committee believed that the newly adopted administrative rules of the Human Rights Department were inconsistent with the intent of the City Council when the Fair Employment and Open Housing Ordinances were passed and that the ordinances, themselves, were in need of clarification so as clearly to conform with the intent of the City Council.

Because of the complexity of the issues raised, you appointed a panel of attorneys and representatives of civil rights organizations to review the issues for the purpose of developing recommendations to the City Council. I was selected by you to chair the panel.

The panel was composed of representatives of the following organizations:

Seattle-King County Bar Association	Anne Ellington
	Kelby Fletcher
Ad Hoc Committee	Fred Hyde
	Val Carlson
	Heidi Durham
	Vanessa Gilder
Seattle Human Rights Commission	Joe Murphy
National Conference of Black Lawyers	Larry Sarjeant
	Ruperta Alexis Caldwell
Northwest Women's Law Center	Curman Sebree
La Raza Lawyers Association	Isabel Safora
A.C.L.U.	Jerry Sheehan
Private Attorney	Abraham Arditi
Local 17 International Federation of Professional and Technical Engineers	Dan O'Donnell

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Each of the organizations identified above was represented and entitled to one vote. However, because it represents several organizations, the Ad Hoc Committee had two votes. The Chair had no vote and did not vote.

The panel was very ably assisted by the staff of the City Attorney, the Human Rights Department and especially by Tom Rasmussen of your office. Occasionally, the panel sought advice from individuals who had strong backgrounds or specific experience related to subjects before the Committee. The panel thanks all of these persons for their valuable contributions to its work.

Beginning September 14, 1984, the panel met every Friday afternoon from 5-7:00 p.m. The final meeting of the panel was held on December 7, 1984. Minutes were kept of the meeting, and they were tape recorded.

Since the final meeting of the panel, the City Attorney has prepared the recommended amendments to the Fair Employment Practices and the Open Housing Ordinances. Tom Rasmussen has prepared the attached report which sets out the recommendations of the panel and their reasoning.

It is my understanding that your Committee will be holding a public hearing and work sessions on the recommendations of the panel. I would be pleased to rearrange my schedule, to the extent such rearrangement is possible, to be available to assist your Committee as it deliberates upon the proposed amendments, if you so desire.

Sincerely,



Arval A. Morris, Professor  
School of Law  
University of Washington

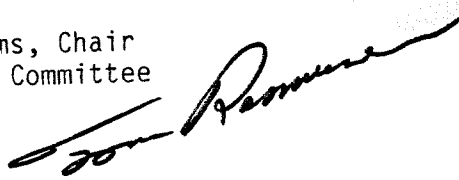
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# Seattle City Council

## Memorandum

Date: January 28, 1985

To: Jeanette Williams, Chair  
City Operations Committee

From: Tom Rasmussen 

Subject: Report on Recommendations of Human Rights Review Panel

Included with this memorandum please find a copy of proposed amendments to Seattle's Fair Employment Practices and Open Housing Ordinances.

As stated by Professor Arval Morris in his letter to you, the recommendations are made by the Human Rights Ordinances Review Panel which was appointed by you in September, 1984.

The recommended amendments were developed at a series of meetings of the Panel. The Panel voted on each proposed amendment following full debate and discussion. Each proposed amendment was supported by a majority of the panel members who attended the meeting on the day the vote on the particular amendment was taken.

The explanation for the recommended amendment is in the column to the right of the proposed amendment. The asterisk before each explanation refers you to the date and page number in the minutes where the debate and decision of the panel are set out in much greater detail. I have included copies of all minutes for your reference.

In addition to recommending that the City Council amend the Open Housing and Fair Employment Practices Ordinances, the Panel has also voted to make the following recommendations to the City Council:

That the City Council include in its State Legislative Request Program the following items:

1. Propose and support legislation to allow State courts to have jurisdiction over violation of City civil rights ordinance;
2. Propose and support legislation to add sexual orientation to the protected classes covered by the State laws against discrimination;
3. Propose and support legislation to add political ideology to the protected classes covered by the State laws against discrimination.

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January 28, 1985

In addition, the Panel, at its December 7, 1984 meeting, voted to make the following statement to the City Council.

The Panel goes on record in support of restoring the pre-1980 independence of the Human Rights Department, to be accomplished through ordinance amendments if possible, or if necessary, through amending the City Charter.

TR:gm

Attachment

PROPOSED AMENDMENTS TO SEATTLE'S HUMAN RIGHTS ORDINANCES  
Combined Reports and Recommendations of the Human Rights Review Panel and the  
City Operations Committee of the Seattle City Council.

May, 1986

Fair Employment Practices

Proposed Amendments	Reasoning
<p>14.04.020. <u>Declaration of Policy.</u></p> <p>A. It is declared to be the policy of the ((<del>city</del>)) <u>City</u>, 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, political ideology, age, creed, religion, ancestry, national origin, or the presence of any <u>actual or perceived</u> sensory, mental or physical handicap. <u>Any violation of this chapter shall constitute a violation of the public policy of The City of Seattle.</u></p> <p>B. The provisions of this chapter shall apply to both private employers and the ((city)) <u>City</u>, 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.</p> <p>C. <u>The purpose of monetary awards and all other remedies is to bring an end to unlawful discriminatory acts and practices, to insure that such acts and practices do not recur, to restore those who have been aggrieved by such acts and practices to their rightful economic status absent the effects of unlawful discrimination, and to compensate such persons for non-economic damage arising out of the unlawful acts or practices.</u></p>	<p>14.04.020 Declaration of Policy</p> <p>*A. The addition of "actual or perceived" is consistent with State law. A handicapped person may be more capable than s/he is perceived to be.</p> <p>**Only the State and not the City can give the Superior Court jurisdiction over violations of this ordinance. The Municipal Court does not hear private lawsuits. By including this language stating that a violation of the ordinance is a violation of public policy, a Superior Court judge may permit an action which charges a violation of the ordinance to be tried as a tort rather than under the discrimination ordinance.</p> <p>***C. This is a general policy statement with regard to remedies. It is identical to the policy statement in Seattle Human Rights Rule 40-320(4). The purpose of its inclusion is to emphasize the intent of monetary awards and all other remedies to end discrimination and to make victims of discrimination whole.</p>
	<p>* 12-4-84; pp 1-4.</p> <p>** 11-2-84; pp 2-3.</p> <p>*** 10-12-84; p. 10, 11-2; p. 6.</p>



AMENDMENTS RECOMMENDED BY COMMITTEE	COMMITTEE REASONING
<p>14.040.020 <u>Declaration of Policy.</u></p> <p>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, political ideology, age, creed, religion, ancestry, national origin, or the presence of any sensory, mental or physical handicap. <u>The role of the Human Rights Department is to enforce the provisions of this chapter in furtherance of this policy.</u></p> <p>B. <u>This chapter shall not be construed to established, endorse or promote specific beliefs, practices or lifestyles.</u></p> <p>((B+))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.</p>	<p>I Chapter 14.04. Fair Employment Practices Ordinances</p> <p>14.04.020 <u>Declaration of Policy</u></p> <p>A. The Committee voted not to add the words "actual or perceived". Several people have questioned whether the perception is intended to be the perception of the employer or the employee. The Committee decided not to include the language to avoid possible confusion.</p> <p>The language relating to public policy is not recommended because the Committee does not recommend that the Council attempt to grant jurisdiction to the Superior Court.</p> <p>The new sentence is proposed to address the issue of whether the Department represents the desires of the charging party or administers the ordinances in the public interest to end discrimination. The Committee recommends this language to clarify Council intent that essentially the HRD controls the course of the case.</p> <p>B. This proviso was added at the request of Councilmember Williams. The purpose of the amendment is to clarify the intent of the FEPO and OHO that support and enforcement of these ordinances implies nothing more nor less than the protection of civil rights.</p> <p>C. The Committee does not recommend this HRRP proposed statement of policy. This paragraph would become a new paragraph "C". The Committee agreed that the role of the HRD is to eliminate discrimination in Seattle through enforcement of the FEPO and OHO. The proposed policy statement, if adopted with others proposed, would serve to place HRD into the function of focussing the attention of a case on seeking monetary remedies for individuals rather than eliminating discrimination in the City.</p>

Proposed Amendments	Reasoning
<p><del>(C)</del>D. Nothing in this chapter shall be deemed to deny any person (<del>in any way</del>) the right to institute any action or to pursue any civil or criminal remedy for the violation of such person's civil rights(.), <u>including a violation of this chapter. Exhaustion of the City's administrative remedies shall not be required prior to pursuing any other remedy. The election of a charging party to pursue any remedy with any federal, state, or local administrative agency or to pursue any other administrative, contractual, civil or criminal remedy based on an alleged violation of civil rights shall not preclude that person from pursuing the remedies available under this chapter. Persons pursuing remedies other than those available under this chapter shall notify the Seattle Human Rights Department of all other such proceedings and any remedies received therefrom. Recoveries or other remedies available under this chapter shall be adjusted so as not to duplicate such other remedies a complainant receives from proceedings based upon the same complaint or incident.</u></p>	<p>14.04.020</p> <p>*D. This amendment is to clarify the intent of the City Council that a charging party may actively pursue other remedies for a violation of his/her Civil rights or for a violation of the provisions of this chapter.</p> <p>The amending language is essentially that which was in the previous rules of HRD. It is included in the ordinance to ensure that HRD will continue to investigate cases where the charging party has filed a charge with another agency or where the charging party has filed a cause of action in a court of law.</p> <p>To avoid duplicate awards or investigation, the last sentence of this subsection and section 14.04.020E have been proposed.</p> <p>**By adding the phrase "including a violation of this chapter" to this section, a charging party would be able to actually bring a cause of action into a court of law for violation of the ordinance if State law is eventually enacted to permit such a cause of action to be brought for violation of the City ordinance.</p> <p>The proposed sentence that one is not required to exhaust administrative remedies is consistent with state law against discrimination which do not require exhaustion of administrative before being permitted to file a cause of action in Court. This would lessen the possibility that the Statute of Limitations would run before an administrative proceeding were completed.</p>
	<p>* 9-28-84; p. 5 10-5-84; pp. 2-7</p> <p>** 11-2-84; p. 2.</p>

AMENDMENTS RECOMMENDED BY COMMITTEE	COMMITTEE REASONING
<p><del>((C.))</del>D. Nothing in this chapter shall be deemed to deny any person <del>((in any way))</del> the right to institute any action or to pursue any civil or criminal remedy for the violation of such person's civil rights.</p> <p>E. <u>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.</u></p>	<p>D. The Committee reads the language for the current paragraph "C", designated "D" on these worksheets, to mean that the charging party does not waive rights to pursue actions in other forums by proceeding under the City's FEPO or OHO. The language, however, does not preclude the HRD from closing a case if the charging party is actively pursuing the case in another forum.</p> <p>The Committee did not recommend this HRRP proposed amendment. The Committee did not wish to add language which requires the HRD to continue to pursue a case where the charging party is actively pursuing the case in another forum simultaneously.</p> <p>E. This new paragraph was recommended following discussion of paragraph "D" above. The Committee recommends that the HRD Director may close a case without the charging party's consent. HRD adopted rules in 1984 which permit the Director to close cases without the consent of the charging party. This amendment would confirm that the Director has that right. The Committee noted that the charging party has the right to appeal the decision to close the case to the Human Rights Commission.</p>

Proposed Amendments	Reasoning
<p><u>E. Nothing in this chapter shall supersede or preclude any bonafide work sharing agreement made by the Human Rights Department with any other agency having jurisdiction to investigate or hear discrimination complaints.</u></p>	<p>14.04.020</p> <p>*E. This language is proposed to clarify the intent of the language proposed for 14.04.020D. Because of this language, HRD wouldn't be precluded from work-sharing agreements which would permit an investigation to be carried out by another agency having jurisdiction to investigate or hear discrimination complaints.</p> <p>The language is drafted so that a work sharing agreement between the Law Department and HRD would not be permissible. This language is intended to preclude HRD and the Law Department which may be representing a respondent from agreeing to not proceed with an administrative investigation until a civil action brought by a charging party is concluded.</p>
<p><u>F. Nothing in this chapter shall be deemed to limit or prevent a charging party from using the public policies and standards of conduct set forth in this ordinance as the basis for a civil action.</u></p>	<p>**F. This language is added to make it clear that the City intends to allow civil actions if a court accepts jurisdiction or if the state legislature enacts legislation extending jurisdiction of the courts to violations of Seattle's Fair Employment Practices Ordinance.</p>
<p><del>((D-))</del> <u>G.</u> 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, employers 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 <del>((city))</del> City by its officers, employees or agents.</p>	
	<p>* 10-5-84; pp. 2-7.</p> <p>** 11-2-84; p. 2.</p>

AMENDMENTS RECOMMENDED BY COMMITTEE	COMMITTEE REASONING
<p><u>E.</u> Amendment not recommended</p>	<p><u>E.</u> This amendment was recommended by the HRRP to follow the amendments to paragraph "C" if they were approved. This amendment is intended to express the intent to avoid duplication of investigation and processing of complaints.</p> <p>Since the Committee is not recommending the HRRP amendments to paragraph "C" neither is it recommending this amendment.</p>
<p><u>F.</u> Amendment not recommended</p> <p>((B-))<u>F.</u> 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, employers 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.</p>	<p><u>F.</u> The Committee is not recommending that the Council attempt to provide Courts with jurisdiction over cases alleging violation of the City's FEPO or OHO. For that reason this amendment is not recommended.</p>

Proposed Amendments	Reasoning
<p>Section 2. Section 14.04.030 of the Seattle Municipal Code (Ordinance 102562 § 3) is amended, adding new subsections M and O, amending subsection F, and re-lettering the current subsection M to N, as follows:</p> <p>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, political ideology, creed, religion, ancestry, national origin; or the presence of any <u>actual or perceived sensory, mental or physical handicap.</u></p> <p>M. <u>"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 encompasses conduct which is reasonably related to a person's political ideology including membership or participation in the activities of a group with shared political ideology.</u></p> <p>N. ((M)) "Respondent" means any person who is alleged or found to have committed an unfair employment practice prohibited by this chapter.</p> <p>O. <u>"Sexual orientation" means actual or perceived male or female heterosexuality, bisexuality, or homosexuality (i.e., choice of sexual partner according to gender), and includes a person's attitudes, preferences, beliefs and practices pertaining to heterosexuality, bisexuality, or homosexuality.</u></p>	<p>14.04.030</p> <p>M. "Political ideology" is not defined in the current Fair Employment Practices ordinance. This definition is the same as that proposed for the Housing ordinance. Please see the discussion to the Housing Ordinance Amendment (14.08.020 "O").</p> <p>O. "Sexual Orientation" is also not defined in the Employment ordinance. The definition which is proposed here is identical to the definition proposed to be amended in the Housing ordinance at 14.08.020"W". Please refer to the discussion of the amendment to that section.</p>

AMENDMENTS RECOMMENDED BY COMMITTEE	COMMITTEE REASONING
<p>Section 2. Section 14.04.030 of the Seattle Municipal Code (Ordinance 102562 § 3) is amended, adding new subsections K, N and P, and re-lettering the current subsection K, L, M, to L, M and O as follows:</p> <p>K. <u>"Marital status" means the presence or absence of a marital relationship and includes the status of married, separated, divorced, engaged, widowed, single or cohabitating.</u></p> <p>((K))L. "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 Department of Human Rights.</p> <p>((L))M. "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.</p> <p>N. <u>"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.</u></p>	<p>14.04.030 <u>Definitions</u></p> <p>K. The Seattle Hearing Examiner in 1985 interpreted "Marital Status" in the FEPO as only protecting individuals who were married. The Human Rights Department requested a definition to make it clear that "marital status" includes both married and unmarried people. The Committee agreed to recommend adding a definition of "marital status".</p> <p>N. "Political ideology" is not defined in the FEPO. The Committee recommends that a definition of "political ideology" should be included. The Committee also recommends that the definition now in the OHO be amended. The definition proposed here is the same as the amended definition proposed for the OHO.</p> <p>Please refer to 14.08.020"P". The amendments and deletions to the definition will be more apparent there.</p> <p>The Committee voted to recommend adoption of the definition proposed by the HRRP which added protection for <u>conduct</u> reasonably related to political ideology. The Committee also agreed with the HRRP recommendation to remove the following provision:</p> <p>"provided such membership or participation does not involve force or violence or produce or incite imminent force or violence toward persons or property."</p> <p>The Committee agreed that to effectively protect citizens from discrimination because of political ideology both conduct and belief must be protected.</p>

Fair Employment Practices

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Proposed Amendments	Reasoning



AMENDMENTS RECOMMENDED BY COMMITTEE	COMMITTEE REASONING
<p data-bbox="191 1360 565 1467">((M))O. "Respondent" means any person who is alleged or found to have committed an unfair employment practice prohibited by this chapter.</p> <p data-bbox="191 1580 743 1835">P. <u>"Sexual orientation" means actual or perceived male or female heterosexuality, bisexuality, homosexuality, transsexuality, or transvestism and includes a person's attitudes, preferences, beliefs and practices pertaining thereto.</u></p>	<p data-bbox="943 384 1365 666">The Committee recommends deleting the proviso relating to force and violence because it is unclear as to how that exemption is to be applied. That vagueness is considered too great to continue in the ordinance.</p> <p data-bbox="943 701 1365 1225">The City Attorney has advised that by protecting "conduct" and deleting the "force and violence" provision, protection of violent conduct may be implied. The Committee acknowledged the concern of the City Attorney; stated that it did not intend to protect violent conduct and requested that a provision be drafted for the "Exclusions" section to make that intent clear. Please refer to the discussion in the "Exclusions" section below.</p> <p data-bbox="943 1266 1365 1413">The Committee recommends adding the following phrase recommended by the City Attorney to the definition of political ideology:</p> <p data-bbox="1019 1454 1300 1548"><u>"...which does not interfere with job performance,"</u></p> <p data-bbox="862 1575 1365 1916">P. The OHO now defines sexual orientation but the FEPO does not. The Committee voted to include a definition of sexual orientation in the FEPO. The proposed amendments are more clearly apparent in the language drafted for 14.08.020 "X" found on page 40 of these worksheets.</p> <p data-bbox="943 1951 1365 2381">The HRD is currently enforcing the ordinances to include transvestites and transsexuals under the sexual orientation definition. The HRD has advised the Council that it considers transsexuals and transvestites to be an attitude, preference, belief or practice which is protected by the current definition of sexual orientation found in the OHO.</p>

Fair Employment Practices

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Proposed Amendments	Reasoning

AMENDMENTS RECOMMENDED BY COMMITTEE	COMMITTEE REASONING
	<p>The HRD has stated that "since the Council is currently considering amending the definition of sexual orientation, the Council may wish to consider whether transsexuals and transvestites should be specifically mentioned in any revision."</p> <p>The Committee recommends amending the ordinances to make it clear that the definition does include transvestites and transsexuals.</p> <p>The Committee recommends deleting language in the current ordinance which states that sexual orientation shall not be defined to include "conduct which is unlawful under city, state or federal law."</p> <p>Criminal conduct is not intended to be protected by the antidiscrimination ordinances and the Committee has clearly stated this on the record. The reason for the proposed deletion is to remove the implication that, for this protected class, there is a particular need for a statement that criminal conduct is not protected by the ordinances.</p> <p>The City Attorney has advised that a statement that criminal conduct is not protected be codified to eliminate any doubt about the Council's intent. The Committee has recommended such a statement in the "Exclusions" section. Please refer to the discussion in the "Exclusions" section below (14.04.050"E").</p>

Proposed Amendments	Reasoning
<p>Section 3. Section 14.04.040 of the Seattle Municipal Code (Ordinance 102562 § 4(A) as last amended by Ordinance 109116 § 4) is amended as follows:</p> <p>14.04.040. <u>Unfair Employment Practices Designated.</u></p> <p><u>The right to be free from discrimination because of race, color, sex, marital status, sexual orientation, political ideology, age, creed, religion, ancestry, national origin, or the presence of any actual or perceived sensory, mental or physical handicap is recognized and declared as a civil right.</u></p> <p>It is an unfair employment practice within the City for any:</p> <p>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;</p> <p>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;</p> <p>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, political ideology, age, creed, religion, ancestry, national origin, or the presence of any <u>actual or perceived</u> 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, political ideology, age, creed, religion, ancestry, national origin, or the presence of any <u>actual or perceived</u> 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;</p> <p>D. Employment agency to discriminate against any person with respect to any reference for employment, assignment as to job classification or otherwise;</p> <p>E. Labor organization to discriminate against any person by limiting, segregating, or classifying its membership in any way that would:</p> <p>1. Deprive or tend to deprive any person of employment opportunities.</p>	<p>14.04.040</p> <p>*This section is proposed to be added to the Unfair Employment Practices section. Such an addition is similar to comparable federal and state laws. It declares a violation of the ordinance to be a violation of civil rights. It would allow for civil rights damages in addition to the damages listed in other sections of the ordinance.</p>
	<p>* 11-2-84; p. 2.</p>

<b>AMENDMENTS RECOMMENDED BY COMMITTEE</b>	<b>COMMITTEE REASONING</b>
<p>14.04.040 Amendment not recommended</p>	<p>14.04.040 Unfair Employment Practices Designated</p> <p>The Committee did not recommend this language because the Committee does not recommend language which would indicate the intent of the Council to give jurisdiction to the Courts to hear private lawsuits based upon allegations of violation of the City antidiscrimination ordinances.</p> <p>This statement on civil rights would indicate the intent to allow private suits and damages for violation of civil rights in addition to the other damages provided.</p>

# Fair Employment Practices

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## Current Statements

## Proposed Amendments

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.

AMENDMENTS RECOMMENDED BY COMMITTEE

Section 14.04.050. Exclusions.

E. Nothing in this chapter shall be construed to protect criminal conduct, except as such conduct may be otherwise protected by law.

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 membership or participation in activities which involve the use of force or violence or advocate or incite force or violence towards persons or property.

COMMITTEE REASONING

14.04.050. Exclusions

E. Because the Committee voted to delete the phrase "...but shall not include conduct which is unlawful under city, state or federal law.", from the definition of "sexual orientation", the City Attorney has stated that the deletion may imply protection of criminal conduct under the antidiscrimination ordinances.

To avoid misinterpretation of the Council's intent this proposed new statement excluding criminal conduct from coverage by the ordinances is recommended by the Committee for inclusion in the ordinances.

F. The City Attorney has stated that the decision of the Committee to delete the proviso exempting "force or violence" from the definition of "political ideology" may be interpreted to protect force or violence.

The Committee has repeatedly stated that it does not intend to imply protection of force or violence and requested the City Attorney to draft language consistent with that intent.

This new paragraph is proposed to be added to the "Exclusions" section to address concerns expressed by employers that they not be required to hire or continue to employ people whose political ideology would threaten the security or confidentiality of the employer.

Proposed Amendments

Reasoning

14.04.100. Charge - Amendments.

The charging party 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. The charging party may also amend a charge to include allegations of additional discriminatory acts and/or retaliation which arose after the filing of the original charge and prior to the Department's issuance of findings of fact and a determination with respect to the original charge. Such amendments shall relate back to the date the charge was first filed and may be made at any time during the investigation of the original charge so long as the Director will have adequate time to investigate such additional allegations and the parties will have adequate time to present the Director with evidence concerning such allegations before the issuance of findings of fact and a determination.

14.04.100

The current Human Rights Ordinances require that a charge of discrimination must be filed within six months of its occurrence.

The proposed amendment permits a charging party to amend the original charge to include discriminatory acts which occurred after the filing of the original charge.

Other discriminatory acts or retaliation may occur or be discovered during investigation of the original charge but they may not be discovered within six months of when they occurred. Such acts of discrimination or retaliation would be precluded from investigation unless an amendment of the original charge is possible.

By allowing such amendments, the charging party will be protected from having to file a new case for each occurrence after the original charge. Requiring separate charges by the same charging party against the same respondent makes it more difficult to discern a pattern of discrimination if one has developed, may require duplicate investigation efforts and may extend the total time it takes to resolve all charges.

\*10-12-84; pp. 2-4.



**AMENDMENTS RECOMMENDED BY COMMITTEE**

14.04.100. Charge - Amendments.

The charging party 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 (~~such~~) amendments shall relate back to the date the charge was first filed. (~~and~~) Such amendments may be made at any time during the investigation of the original charge so long as the Director will have adequate time to investigate such additional allegations and the parties will have adequate time to present the Director with evidence concerning such allegations before the issuance of findings of fact and a determination.

**COMMITTEE REASONING**

14.04.100 Charge - Amendments:  
Divided Report

The purpose of this amendment is to clarify the language relating to amending charges. The question considered by the Committee was whether after the filing of the original charge the charging party should be permitted to amend it to include allegations of subsequent acts of discrimination and/or retaliation.

Report of Councilmembers Williams and Galle:

We recommend that HRD be permitted to continue the practice under the current rules which requires the charging party to file a separate charge for each act of discrimination.

The Committee did not believe that requiring the filing of a new charge would be a hardship on the charging party. It recommends amending the section to make it clear that the current language in the ordinance, is for purposes of jurisdiction. The language is not intended to be applied to the calculation of damages as is now interpreted by HRD.

Report of Councilmember Sibonga:

I support the proposal to permit the charging party to amend the original charge to include allegations of additional acts of discrimination.

I believe that the current HRD practice of requiring the filing of a new charge for each subsequent act of discrimination or retaliation reduces the ability of the person to have all discriminatory acts investigated. If the charging party is permitted to amend the original

charge under the restrictions proposed, all issues between the charging party and the respondent could be investigated and disposed of.

The proposal does mean that the six-month statute of limitations only applies to the original charge. However, the proposed amendment does limit the likelihood of the investigation or case being unresolved for an unrealistic period of time because of the restrictions on the right to amend charges.

Proposed Amendments

Reasoning

Section 14.04.110 of the Seattle Municipal Code

(Ordinance 102562 § 5(E)) is amended to add a new Subsection E,  
as follows:

E. While fair and equitable settlements are encouraged, settlements must be voluntarily entered into by the parties, and charging parties shall not be penalized for rejecting a settlement offer.

14.04.110

\*E. This amendment is a policy statement. It is specifically related to 14.04.140"A".

It is intended to apply to settlement of claims during the predetermination or conciliation stage before the Director has determined under 14.04.120 that reasonable cause exists to believe that an unfair practice has been committed.

The amendment would make predetermination settlements voluntary to both the charging party and the respondent.

Under this policy, the Department would not be able to dismiss a charge if the charging party turned down a predetermination settlement offer recommended by the Department. The investigation would have to continue.

Please refer to the relevant discussion in subsection 14.04.140A.

\*10-26-84; pp. 1-8.

**AMENDMENTS RECOMMENDED BY COMMITTEE**

14.04.110

E. Divided Report

**COMMITTEE REASONING**

14.04.110. Charge-Notice and Investigation: Divided Report.

The amendment proposed here is to a section of the FEPO which sets out the general procedure for investigating a complaint. This phase is sometimes called the "predetermination phase", i.e., prior to the conclusion of the investigation and the determination of reasonable cause or no reasonable cause to believe an unfair practice has been or is being committed. The HRD The rule (40.210(8)) permits the Director to dismiss the charge if the charging party refuses a predetermination settlement offer which would provide all relief if a determination of reasonable cause were made. The proposed amendment would nullify the HRD rule.

Report of Councilmembers Williams and Galle:

HRD should be representing the City and its policies. It rejected the proposed amendment because it would establish a policy whereby HRD would be representing the charging party and the charging party would be contesting the course of the case.

Report of Councilmember Sibonga:

I recommend that the proposed amendment be approved. I believe that the charging party is entitled to a determination of whether discrimination has occurred.

Both parties should have the right to voluntarily enter into a settlement. It is unfair to dismiss a case if the charging party does not settle before a determination that discrimination has occurred. This risks focussing the efforts of the HRD on assessing damages rather than identifying and eliminating discriminatory acts.

Proposed Amendments	Reasoning
<p>Section 14.04.120 of the Seattle Municipal Code is amended to add a new Subsection C, as follows:</p> <p><u>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.</u></p>	<p>14.04.120</p> <p>*"C". The panel proposes that a new subsection "C" be enacted by the Council. SMC 14.04.120 sets out the responsibilities of the Director to make written findings of fact and a written determination whether reasonable cause exists to believe that an unfair practice has occurred.</p> <p>The proposed subsection would not permit the Director to change written findings, determinations or orders issued to the parties without their consent or unless ordered by the Commission.</p> <p>The Director would have the discretion to correct clerical mistakes or errors upon the motion of either party or the Director.</p> <p>Under the current rules, the Director at any time before a charging party is paid relief or before a case is transmitted to the City Attorney may withdraw or amend any findings, determinations or order issued by the Department or Director.</p> <p>The new subsection has been proposed to avoid the possibility that the written findings and determination could be changed because of political or public pressure.</p>
	<p>* 11-30-84; pp. 4 and 5.</p>

AMENDMENTS RECOMMENDED BY COMMITTEE	COMMITTEE REASONING
<p>Section 5. Section 14.04.120 of the Seattle Municipal Code is amended to add a new Subsection C, as follows:</p> <p><u>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.</u></p>	<p>Section 5. 14.04.120. Findings of Fact-Amendments</p> <p>C. This amendment was proposed by the HRRP. It is a new paragraph. Under the current rules of the HRD the Director, at any time before a charging party is paid relief, or before a case is transmitted to the City Attorney, may withdraw or amend any findings, determination or order issued by the Department or Director. The proposed amendment would restrict the type of changes the HRD Director could make without the consent of the parties.</p> <p>This language permits correction of clerical and typographical errors. The Committee members agreed that finality must exist regarding the Director's decisions with substantive changes made only upon approval of the parties.</p>

Proposed Amendments	Reasoning
<p>Subsection A of Section 14.04.140 of the Seattle Municipal Code (Ordinance 102562 § 5(F) part) is amended as follows:</p> <p>A. In all cases except a case in which a ((city)) <u>City</u> 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 which may include as a condition of settlement the elimination of the unfair employment practice((7)); <u>back pay; hiring((7)); reinstatement; ((or)) upgrading((7)) or retroactive seniority; ((with or without back pay, or other damages,)) restoration of benefits; reimbursement for loss of benefits; incidental and consequential expenditures and losses; attorney's fees and costs; interest on back pay and all out-of-pocket expense awards; damages for mental and physical anguish, pain and suffering; damages for embarrassment, humiliation and indignity; punitive damages; separate, non-nominal damages for violation of civil rights; admittance or restoration to membership in a labor organization, admittance to participation in a guidance, apprentice training or retraining program, or such other requirements as may lawfully be agreed upon by the parties, and the Director. Any settlement agreement shall be reduced to writing and signed by the Director, <u>the charging party and the respondent. The charging, party shall not be penalized for rejecting a conciliation offer in order to seek full relief through pursuing the full administrative process authorized by this chapter. If a conciliation agreement is reached, an ((Am)) 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.</u></u></p>	<p>14.04.140</p> <p>*A. This subsection sets out the remedies available in the conciliation and settlement of cases not involving City departments.</p> <p>The new language is proposed to insure that all remedies are available to make a charging party whole after discrimination has occurred.</p> <p>The remedies proposed for this subsection were included in the previous rules of the Human Rights Department. Similar remedies are also provided in state or federal employment statutes or regulations.</p> <p>The remedy of having attorney's fees awarded was previously in the rules. It was stricken because statutory authority is required. Including the provision here would give the HRD the necessary authority.</p> <p>Punitive damages were allowed under the old rules where there was a willful or substantial failure to comply with the ordinances. They are proposed to be included in the ordinance to provide a penalty for violation of the discrimination ordinances.</p> <p>Punitive damages must be provided for by statute. State law authorizes punitive damages in sex discrimination cases in the form of treble damages. In the absence of State legislation prohibiting the City from providing for punitive damages for violation of other provisions of City discrimination ordinances, the panel proposes the addition of this penalty.</p> <p>Providing separate non-nominal damages for violations of civil rights relates to the provisions in 14.04.040 ("Unfair Employment Practices Designated") that declares that the right to be free from discrimination is a civil right. It is intended to guide the Human Rights Department or Hearing Examiner in assessing penalties for civil rights violations and authorizes them to award damages for violation of civil rights separate and distinct from the other damages provided.</p>
	<p>* 10-19-84; pp. 5-9. 11-2-84; pp. 4-8.</p>

**AMENDMENTS RECOMMENDED BY COMMITTEE**

Section 6. Subsection A of Section 14.04.140 of the Seattle Municipal Code (Ordinance 102562 § 5(F) part) is amended as follows:

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. ~~((which may include as a condition))~~ 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, ~~((or other))~~ lost benefits, ~~((damages,))~~ 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 requirements as may lawfully be agreed upon by the parties, may lawfully be agreed upon by the parties, and the Director.))~~ 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 one thousand dollars. 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.

**COMMITTEE REASONING**

Section 6. 14.04.140. Settlement of Cases Not Involving City Departments

- A. This section sets out provisions relating to conciliation and settlement of cases. It applies to the phase of a case after the determination of reasonable cause to believe that discrimination has occurred. It requires the Director to attempt to eliminate the unfair employment practice by conciliation. It also lists the remedies available to the Director in settling and conciliating cases.

The Committee voted to recommend that all sections which include remedies be amended to be consistent with each other. Currently the extent to which remedies are set out in the several sections of ordinance vary.

The Committee recommends amending the ordinances to include the following remedies:

1. attorney's fees
2. damages for humiliation and mental suffering up to \$1,000

The HRD requested that attorney's fees be specifically provided for in the ordinances and the Committee concurred.

The Committee recommends that the damages which may be assessed for violation of the ordinances should be consistent with state law. State statutes limit employment discrimination damages for humiliation and mental suffering to \$1,000. The Committee recommends that limitation be drafted into this section.

Proposed Amendments	Reasoning
	<p>14.04.140 (Cont.)</p> <p>*A. The last three sentences which are proposed to be amended in this subsection relate specifically to the general statement in 14.04.110E relating to making settlement agreements voluntary which is discussed previously.</p> <p>This amendment would require that predetermination settlements are voluntary and would allow the charging party to continue to pursue the case with the possibility of having it heard by an impartial arbitrator such as the Hearing Examiner.</p> <p>Currently, the rules of the Department permit the department to dismiss a charge if a charging party refuses a predetermination settlement offer "that would provide the charging party all relief" permitted by the ordinances.</p> <p>The amendment is recommended because the charging party and the department may honestly disagree on what constitutes "all relief".</p> <p>There is also concern that a determination of what constitutes all relief may not be able to be made until after a full investigation has been conducted.</p>
	<p>* 10-26-84; pp. 1-8.</p>



AMENDMENTS RECOMMENDED BY COMMITTEE	COMMITTEE REASONING
	<p>The Committee does not recommend including the following proposed amendments to the remedies sections of the ordinances:</p> <ol style="list-style-type: none"><li>1. Back pay computed without deducting interim earnings;</li><li>2. Retroactive seniority;</li><li>3. Separate, non-nominal damages for violation of civil rights;</li><li>4. Punitive damages;</li></ol> <ol style="list-style-type: none"><li>5. Incidental and consequential expenditures and losses;</li><li>6. Interest on all back pay and out-of-pocket expenses;</li><li>7. Unlimited damages for mental and physical anguish, pain, suffering, embarrassment, humiliation and indignity.</li></ol> <p>The Committee does not recommend punitive damages. The Committee was persuaded that statutory authority from the state is required before the City Council enacts the remedy of punitive damages.</p> <p>The Committee recommendations should not be construed to prevent HRD from assessing remedies consistent with all relevant law. However, if statutory authority is required from the City Council and is not provided, HRD may not assess them.</p> <p><u>Conciliation Offers</u></p> <p>The Committee recommends against approval of the proposed new sentence relating to conciliation offers. The proposed</p>

Fair Employment Practices

Page 27.

Proposed Amendments	Reasoning

AMENDMENTS RECOMMENDED BY COMMITTEE	COMMITTEE REASONING
	<p>amendment applies to offers made <u>after</u> there has been a determination that reasonable cause exists to believe that discrimination has occurred.</p> <p>Current HRD rules state that a charging party's consent is not required for the Director to enter into a conciliation agreement with a respondent if the Director determines the agreement provides the charging party all relief to which he or she would be entitled.</p> <p>The Committee supports the HRD rule. It believes that HRD should be objectively enforcing the ordinances. The individual charging party should not control the course of</p> <p>discrimination cases. It rejected the proposed amendment which would require the charging party to approve conciliation agreements. The rule of HRD would continue.</p>

Proposed Amendments	Reasoning
<p>Subsection B of Section 14.04.150 of the Seattle Municipal Code (Ordinance 102562 § 5(F) part) is amended as follows:</p> <p>B. Within sixty days of a determination of reasonable cause, the Director, shall confer with the parties and determine an appropriate remedy, which remedy <del>((may))</del> <u>shall include any back pay; and may include hiring((→)); reinstatement; ((or)) upgrading or retroactive seniority; ((with or without back pay, lost benefits)) restoration of benefits; reimbursement for loss of benefits; incidental and consequential expenditures and losses; attorney's fees and costs; interest on back pay and all out-of-pocket expense awards; damages for mental and physical anguish, pain and suffering; damages for embarrassment, humiliation and indignity; punitive damages; separate, non-nominal damages for violation of civil rights; admittance or restoration to membership in a labor organization; admittance to participation in a guidance, apprentice training or retraining program; and such other affirmative relief as is authorized by law and as may be appropriate and reasonable to make the aggrieved person whole, eliminate the unfair practice, and provide for finality of the charge((and such))</u>. <u>Once it has been determined that an awardee has been deprived of pay that s/he would have received from the respondent but for the respondent's discriminatory acts or practices, back pay shall be awarded. Back pay shall be computed without deducting interim earnings. Neither the good faith of the respondent nor the fact that the award is not necessary to ensure future compliance with the Fair Employment Practices Ordinance are factors which affect the back pay award. Such remedy shall be reduced to writing in an order of the Director.</u></p>	<p>14.04.150</p> <p>*B. This subsection establishes the remedies available for the settlement and conciliation of cases involving City departments. It is identical to 14.04.140A up to the final nine lines proposed to be added relating to back pay.</p> <p>The proposed language requires that back pay shall be awarded without deducting income which the charging party may have earned during the period of unlawful discrimination.</p> <p>This creates a type of punitive damage which is unique to cases involving back pay. The intent is to provide greater deterrence to employers.</p> <p>The rationale is that an employer who is required to provide back pay should not benefit from the discrimination by paying less than he/she would have paid in wages because of the employee succeeded in finding other work during the interim.</p> <p>This requirement that back pay shall be computed without a set off for back wages will serve to reduce the advantage of stalling by employers.</p> <p>The final new sentence which states that good faith shall not affect the award of back pay is in the current rules and was in the previous rules. The reasoning is that even though the respondent employer may have been acting in good faith, the charging party has nevertheless been harmed and have suffered a loss.</p>
	<p>* 11-16-84: pp. 10-14.</p>

**AMENDMENTS RECOMMENDED BY COMMITTEE**

Section 7. Subsection B of Section 14.04.150 of the Seattle Municipal Code (Ordinance 102562 § 5(F) part) is amended as follows:

B. Within sixty 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 one thousand dollars. ((and such other affirmative relief as is authorized by law and as may be appropriate and reasonable to make the aggrieved person whole, eliminate the unfair practice, and provide for finality of the charge, and such)) Such remedy shall be reduced to writing in an order of the Director.

**COMMITTEE REASONING**

Section 7. 14.04.150. Settlement of City Cases Involving City Departments

8. This paragraph, as the previous one, is intended to list the remedies which are to be available to the Director when a determination of reasonable cause has been made and the Director is determining the appropriate remedy.

The recommendations of the Committee are consistent with the recommendations for 14.04.140.

Proposed Amendments	Reasoning
<p style="text-align: center;">Subsection A of Section 14.04.170 of the</p> <p>Seattle Municipal Code is amended as follows:</p> <p>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. (<del>if provided, if the City Attorney determine 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.</del>)</p>	<p>*14.04.170</p> <p>A. This subsection establishes the procedures which must be followed by the City Attorney in non-City cases where the Director has made a determination that reasonable cause exists to believe that an unfair employment practice has occurred.</p> <p>The panel recommends deletion of the language which requires the City Attorney to file a statement of the reasons for determining that there is no legal basis for a complaint to be filed.</p> <p>The intent of the proposal is to ensure that a charging party will be able to have a determination of reasonable cause heard before the Hearing Examiner.</p> <p>The intent is that the City Attorney shall not be able to preclude the right of a charging party to the Hearing.</p> <p>The panel is concerned that the conflict may develop for the City Attorney that representing a charging party in a non-City case may result in a determination that would have adverse implications for a City department in a different case but with similar issues.</p> <p>The panel also supported this proposed deletion because the current provision permits the City Attorney to essentially overrule the investigation and findings of the Human Rights Department before the case is ever considered by an impartial Hearing Examiner.</p> <p>It is the intent of the panel that if the deletion of this provision conflicts with the authority of the City Attorney under the Charter that appropriate language be added to this subsection which would permit the substitution of attorneys to represent the Human Rights Department in the event of a conflict of interest.</p>
	<p>*12-7-84, pp. 2-4.</p>

AMENDMENTS RECOMMENDED BY COMMITTEE	COMMITTEE REASONING
	<p>14.04.170. <u>Complaint and Hearing of Cases with all Respondents except City Departments.</u></p> <p>A. The Committee recommends that the language should not be deleted. The Committee recommends that the language be retained to ensure that the City Attorney provide an explanation if a complaint is not filed with the Hearing Examiner or Human Rights Commission.</p> <p>The Committee believes that the City Attorney should have the discretion to determine whether to pursue a case.</p>

Proposed Amendments

Reasoning

Subsection C of Section 14.04.180 of the Seattle Municipal Code (Ordinance 102562 § 5(I)) is amended as follows:

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 purposes of this chapter, and secure compliance therewith, including but not limited to back pay; hiring((?)); reinstatement; ((or)) upgrading or retroactive seniority; ((with or without pay and other appropriate relief)) restoration of benefits; reimbursement for loss of benefits; incidental and consequential expenditures and losses; attorney's fees and costs; interest on back pay and all out-of-pocket expense awards; damages for mental and physical anguish, pain and suffering; damages for embarrassment, humiliation and indignity; punitive damages; separate, non-nominal damages for violation of civil rights; admittance or restoration to membership in a labor organization; admittance to participation in a guidance, apprentice training or retraining program; and such other affirmative relief as is justified by the evidence. Once it has been determined that an awardee has been deprived of pay that s/he would have received from the respondent but for the respondent's discriminatory acts or practices, back pay shall be awarded. Back pay shall be computed without deducting interim earnings. Neither the good faith of the respondent nor the fact that the award is not necessary to ensure future compliance with the Fair Employment Practices ordinance are factors which affect the back pay award. Back pay liability shall not accrue from a date more than two years prior to the initial filing of the charge.

14.04.180

\*"C". This subsection is part of the section in the ordinance setting out authority and duties of the Hearing Examiner following the hearing of cases against all respondents except City departments.

The proposed amendments detailing the possible remedies are identical to those proposed for 14.04.140 and 14.04.150. The rationale for including them in this subsection as well as the proceeding two subsections is to ensure that all remedies are recognized as means of making a charging party whole and that the remedies will be available at each stage of the process.

\* 10-19-84; p. 5.



**AMENDMENTS RECOMMENDED BY COMMITTEE**

Section 8. Subsection C of Section 14.04.180 of the Seattle Municipal Code (Ordinance 102562 § 5(I)) is amended as follows:

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, 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, including action which could be ordered by a court, except that damages for humiliation and mental suffering shall not exceed one thousand dollars. ((and other appropriate relief justified by the evidence.)) Back pay liability shall not accrue from a date more than two years prior to the initial filing of the charge.

**COMMITTEE REASONING**

Section 8. 14.04.180 Decision and Order - Hearing Examiner or Commissioners

- C. The amendments proposed here state the remedies available to the Hearing Examiner in the event that a respondent has committed an unfair employment practice.

The Committee recommends that the remedies available to the Hearing Examiner should be stated in this section. The remedies are consistent with all other remedies sections of both statutes.

The Hearing Examiner or Commissioner are not precluded from other remedies unless they are required by statute.

Proposed Amendments

Reasoning

Section 14.08.010 of the Seattle Municipal Code (Ordinance 104839 § 1) is amended and new subsections A, B, C and D are added as follows:

14.08.010 Short Title And Purposes.

A. This chapter shall be known as and may be cited as the "Open Housing Ordinance." The general purposes of this chapter are to promote the availability and accessibility of housing and real property to all persons; to prohibit discriminatory practices in real property transactions, whether direct or indirect, which inexcusably and unjustifiably deny those persons equal rights and opportunities in acquiring or disposing of real property; and to provide enforcement mechanisms for the accomplishment of such purposes; and to these ends the provisions of this chapter shall be liberally construed. Any violation of this chapter shall constitute a violation of the public policy of The City of Seattle.

B. The purpose of monetary awards and all other remedies is to bring an end to unlawful discriminatory acts and practices, to insure that such acts and practices do not recur, to restore those who have been aggrieved by such acts and practices to their rightful economic status absent the effects of unlawful discrimination, and to compensate such persons for non-economic damage arising out of the unlawful acts or practices.

C. 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, including a violation of this chapter. Exhaustion of the City's administrative remedies shall not be required prior to pursuing any other remedy. The election of a charging party to pursue any remedy with any federal, state, or local administrative agency or to pursue any other administrative, contractual, civil or criminal remedy based on an alleged violation of civil rights shall not preclude that person from pursuing the remedies available under this chapter. Persons pursuing remedies other than those available under this chapter shall notify the Seattle Human Rights Department of all other such proceedings and any remedies received therefrom. Recoveries or other remedies available under Seattle Human Rights laws shall be adjusted so as not to duplicate such other remedies a complainant receives from proceedings based upon the same complaint or incident.

D. Nothing in this chapter shall supersede or preclude any bona fide work sharing agreement made by the Human Rights Department with any other agency having jurisdiction to investigate or hear discrimination complaints.

E. Nothing in this chapter shall be deemed to limit or prevent a charging party from using the public policies and standards of conduct set forth in this ordinance as the basis for a civil action.

14.08.010

\*A. As in 14.04.020A, the proposed new sentence is included to establish that violation of the Housing ordinance violates public policy. Accordingly, a court may choose to accept jurisdiction over a cause of action resulting from a violation of this ordinance as a tort.

\*\*B. This statement is identical to the policy statement in Seattle Human Rights Rule 40.320(4). It is proposed in order to establish the purpose of monetary awards as a matter of law as well as administrative policy. It is identical to the statement in 14.04.020C.

\*\*\*C,D&E. Each of these proposed subsections is identical to its counterpart in 14.04.020 D, E and F, respectively. The reasoning for recommending their enactment into 14.08 is the same as that for the Employment ordinance. Please see that discussion.

\* 11-2-84, pp. 2-3.

\*\* 10-12-84, p. 10; 11-2-84, p. 6.

\*\*\* 9-28-84, p. 5; 10-5-84, pp. 2-7; 11-2-84, p2.

AMENDMENTS RECOMMENDED BY COMMITTEE

Section 9. Section 14.08.010 of the Seattle Municipal Code (Ordinance 104839 § 9) is amended as follows:

14.08.010 Short Title and Purposes.

A. This chapter shall be known as and may be cited as the "Open Housing Ordinance." The general purposes of this chapter are to promote the availability and accessibility of housing and real property to all persons; to protect discriminatory practices in real property transactions, whether direct or indirect, which inexcusably and unjustifiably deny those persons equal rights and opportunities in acquiring or disposing of real property; and to provide enforcement mechanisms for the accomplishment of such purposes; and to these ends the provisions of this chapter shall be liberally construed. The role of the Human Rights Department is to enforce the provisions of this chapter in furtherance of this policy.

B. This chapter shall not be construed to establish, endorse or promote specific beliefs, practices or lifestyles.

C. 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.

D. 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.

E. 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.

COMMITTEE REASONING

II. Chapter 14.08: Proposed Open Housing Ordinance Amendments

The discussion of the Open Housing Ordinance (OHO) amendments shall be on an exception basis. Those amendments proposed for the OHO which are the same as amendments proposed for the FEPO, which were discussed previously, and which would have the same effect, will not be discussed again.

14.08.010 Short Title and Purpose

A. Same as discussion of 14.04.020 B.

B. Same as 14.04.020 C.

C. Same as 14.04.020 D.

D. Same as 14.04.020 E.

E. Same as 14.04.020 F.

Current Statements

Proposed Amendments

Subsections O and W of Section 14.08.020 of the Seattle Municipal Code are amended, and a new subsection X is added as follows:

14.08.020

\*O. This definition of political ideology is based upon the previous rules of the Human Rights Department (HRD). Except for the word "purpose", the language proposed was in the previous rules.

O. "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))~~ encompasses conduct which is reasonably related to a person's political ideology including membership or participation in the activities of a group with shared political ideology. ((provided such membership or participation does not involve force or violence or produce or incite imminent force or violence toward persons or property.))

The words are proposed to be stricken because they are so broad and vague that they may have a chilling effect on the exercise of First Amendment rights.

It is unnecessary to treat political ideology differently than other protected categories such as sex, race, or age. Court-developed discrimination case law allows employers and landlords to take adverse actions against employees or tenants only for legitimate business reasons and only when they do not discriminate against people in protected categories. Activity involving force or violence, whether or not related to political ideology, may constitute such a legitimate reason only if it is work-connected and only if the person in the protected category is not the only one singled out for adverse action.

W. "Sexual orientation" means actual or perceived male or female heterosexuality, bisexuality or homosexuality (i.e., choice of sexual partner according to gender), and include a person's attitudes, preferences, beliefs and practices pertaining to ~~((sex,))~~ heterosexuality, bisexuality or homosexuality. ((but shall not include conduct which is unlawful under city, state or federal law)).

\*\*W. The words "actual" or "perceived" are added to prohibit discrimination based upon assumptions regarding a persons sexual orientation.

The new section in parenthesis and the specification of heterosexuality, bisexuality or homosexuality in the last line of this subsection are proposed to be added to make it clear that it is intended that adverse action against persons for improper or illegal sexual conduct would be permissible under this definition as long as all persons in that particular employment or housing context are subject to the same treatment for such conduct whether or not the conduct is heterosexual, bisexual or homosexual.

\* 9-21-84, pp. 5-8; 9-28-84, pp. 1-3.

\*\* 9-28-84, pp. 3 and 4;  
11-9-84, pp. 2-11;  
11-16-84, pp. 1-8.

AMENDMENTS RECOMMENDED BY COMMITTEE

Section 10. Section 14.08.020 of the Seattle Municipal Code is amended, adding a new subsection J, re-lettering subsections J through W to K through X and amending re-lettered subsections P and X as follows:

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

((?)K. "Occupant" includes any person who has established residence or has the right to occupancy of real property.

((X)L. "Owner" includes persons who own, lease, sublease, rent, operate, manage, have charge of, control or have the right of ownership, possession, management, charge, or control of real property on their own behalf or on behalf of another.

((E)M. "Parental status" means being a parent, step-parent, adoptive parent, guardian, foster parent or custodian of a minor child or children, which child or children shall permanently or temporarily occupy the real estate.

((M)N. "Party" includes the person charging or making a complaint or upon whose behalf a complaint is made alleging an unfair practice, the person alleged or found to have committed an unfair practice((?) and the Department of Human Rights ((and the Office of Women's Rights)).

((N)O. "Person" includes one or more individuals, partnerships, organizations, trade or professional associations, corporations, legal representatives, trustees, trustees in bankruptcy and receivers. It includes any owner, lessee, proprietor, manager, agent or employee, whether one or more natural persons, and further includes any political or civil subdivisions or agency or instrumentality of the City.

COMMITTEE REASONING

Section 10. 14.08.020 Definitions

J. Same as 14.04.030 K.

Open Housing

Page 39.

Proposed Amendments	Reasoning
14.08.020 (cont.)	14.08.020 (cont.)

AMENDMENTS RECOMMENDED BY COMMITTEE

COMMITTEE REASONING

((O))P. "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 the property rights of the landowner. ((or participation in the activities of a group with shared political ideology, provided such membership or participation does not involve force or violence or produce or incite imminent force or violence toward persons or property.))

((P))Q. "Prospective investor" includes any person who seeks to borrow money to finance the acquisition, construction, repair, or maintenance of real property.

((Q))R. "Prospective occupant" includes any person who seeks to purchase, lease, sublease or rent real property.

((R))S. "Real estate agent, salesperson or employee" includes any person employed by, associated with or acting for a real estate broker to perform or assist in the performance of any or all of the functions of real estate broker.

((S))T. "Real estate broker" includes any person who for a fee, commission, or other valuable consideration, lists for sale, sells, purchases, exchanges, leases or subleases, rents, or negotiates or offers or attempts to negotiate the sale, purchase, exchange, lease, sublease or rental of real property of another, or holds themselves out as engaged in the business of selling, purchasing, exchanging, listing, leasing, subleasing, or renting real property of another, or collects the rental for use of real property of another.

((T))U. "Real property" includes housing accommodations, buildings, structures, real estate, lands, tenements, leaseholds, interests in real estate cooperatives, condominiums, and hereditaments, corporeal and incorporeal, or any interest therein.

((U))V. "Respondent" means any person who is alleged to have committed an unfair practice prohibited by this chapter.

((V))W. "Rooming unit" includes one or more rooms within a dwelling unit or roominghouse containing space for living and sleeping.

((W))X. "Sexual orientation" means actual or perceived male or female heterosexuality, bisexuality ((or) homosexuality, transsexuality, or transvestism and includes a person's attitudes, preferences, beliefs and practices pertaining ((to sex)) thereto. ((but shall not include conduct which is unlawful under city, state or federal law.))

P. This language was prepared and recommended by the City Attorney.

The language is to codify the Committee's intent that the antidiscrimination ordinances are not intended to protect conduct which adversely affects the property owner.

X Same as the proposed definition of "sexual orientation" in 14.04.030 P.

Current Statements	Proposed Amendments
<p>X. <u>"Structural" for purposes of 14.08.040(B) means the load-bearing members and essential structure or composition of a place, as distinguished from its finish, decorations or fittings. Examples of structural components are floors, walls, stairs, sidewalks, elevators, and escalators. Examples of things that are not structural are moveable walls, bathroom fixtures and partitions, doors and door hardware, door openings, cabinets, counters, handrails, ramps, door bells, elevator controls, signs, alarm systems, and carpeting or other floor covers.</u></p>	<p>The last phase is recommended to be deleted because it adds nothing to the existing ability to legitimately take adverse action against a person because of illegal conduct. Continuing inclusion would be superfluous, it would be unique to this protected class, and would reinforce misconceptions related to people who are homosexual.</p> <p>14.08.020</p> <p>*X. "Structural" is proposed to be defined because a new subsection is proposed at 14.08.040 "B" which would make it an unfair practice to refuse or to fail to make reasonable accommodations for handicapped tenants. "Structural" changes are not proposed to be required by 14.08.040B unless other laws require such changes.</p> <p>By defining "structural" here and by giving examples as proposed here, greater certainty of the intent of the 14.08.040B is provided.</p>
	<p>* 11-30-84, p. 1-4.</p>



AMENDMENTS RECOMMENDED BY COMMITTEE	COMMITTEE REASONING
<p>14.08.020 X. Amendment not recommended</p>	<p>X. This definition of "structural" is not required to be added because the Committee rejected the proposed amendment to 14.08.040 which would require the owner or landlord to make reasonable accommodations to the sensory, mental or physical handicap of any person.</p> <p>The amendment proposed for 14.08.040 exempted "structural" changes from the rejected requirement. For that reason, structural was required to be defined.</p>

Proposed Amendments

Reasoning

14.08.040. Unfair Practices Generally.

A. No owner, assignee, real estate broker, real estate agent, salesperson or employee, or other person having the right to sell, rent, lease, sublease, assign, transfer, or otherwise dispose of real property shall discriminate by undertaking or refusing to sell, rent, lease, sublease, assign, transfer or otherwise deny to or withhold from any person or group of persons such real property, or segregate the use thereof, or represent that such real property is not available for inspection, when in fact it is so available, or expel or evict an occupant from real property because of the race, color, religion, ancestry, national origin, age, sex, marital status, sexual orientation, parental status, political ideology, or the presence of any actual or perceived sensory, mental or physical handicap or the use of a trained guide dog by a blind or deaf person ((of such a person or persons)), or to discriminate against or segregate any person because of such person's race, color, religion, ancestry, national origin, age, sex, marital status, sexual orientations, parental status ((or)), political ideology or the presence of any actual or perceived sensory, mental or physical handicap or the use of a trained guide dog by a blind or deaf person in the terms, conditions or privileges of the sale, rental, lease, sublease, assignment, transfer or other disposition of any such real property, including but not limited to the setting of rates for rental or lease, or establishment of damage deposits, or other financial conditions for rental or lease, or in the furnishings of facilities or services in connection therewith.

B. It is an unfair practice for an owner, real estate broker, real estate agent, salesperson, or employee, or other person having the right to rent, lease, sublease, or assign a lease of real property to fail or refuse to make reasonable accommodations to the sensory, mental, or physical handicap of any person or group of persons who currently rent, lease, sublease or have an assignment of a lease of real property, or who attempt to rent, lease, sublease or obtain the assignment of a lease of real property; PROVIDED, that nothing in this section shall be construed to require structural changes, modifications or additions to make facilities accessible to handicapped persons except as otherwise required by law.

14.08.040

\*A. The proposed phrase:

"or the presence of any actual or perceived sensory, mental or physical handicap or the use of a trained guidedog by a blind or deaf person"

is proposed to be added to this and all other sections of the Open Housing Ordinance where the protected classes are set out, i.e., 14.08.060, 070, 080, and 090.

The current Housing ordinance does not prohibit discrimination on the basis of handicap. The Employment ordinance includes handicap as a protected class. This amendment would bring the Housing ordinance in line with the Employment ordinance. Physical handicap is intended here to include persons who are either temporarily or terminally ill and discrimination against such persons is intended to be a violation of both ordinances.

\*\*B. As stated above "Structural" is defined in 14.08.020X. It would not be a violation of the ordinance to decline to make structural changes to accomodate a handicapped person. However, the subsection does recognize that other laws may require that structural changes be made to make facilities accessible to the handicapped.

Reasonable accommodation is determined on a case by case basis. Case law and regulations will assist in guiding decisions regarding what is reasonable. What is reasonable is basically determined by cost.

If a nonstructural change is a reasonable accommodation, the cost may not be passed on to the tenant for whom the accommodation is being made. Removability is one factor to be considered in determining reasonableness. State law permits the landlord to insist that the accommodation does not destroy the inherent or esthetic value of the dwelling.

\* 11-30-84, p. 1.

\*\* 11-30-84, pp. 2-4.

**AMENDMENTS RECOMMENDED BY COMMITTEE**

14.08.040. Unfair Practices  
Generally.

A. No owner, assignee, real estate broker, real estate agent, salesperson or employee, or other person having the right to sell, rent, lease, sublease, assign, transfer, or otherwise dispose of real property shall discriminate by undertaking or refusing to sell, rent, lease, sublease, assign, transfer or otherwise deny to or withhold from any person or group of persons such real property, or segregate the use thereof, or represent that such real property is not available for inspection, when in fact it is so available, or expel or evict an occupant from real property because of the race, color, religion, ancestry, national origin, age, sex, marital status, sexual orientation, parental status, political ideology, or the presence of any sensory, mental or physical handicap or the use of a trained guide dog by a blind or deaf person ((of such a person or persons)), or to discriminate against or segregate any person because of such person's race, color, religion, ancestry, national origin, age, sex, marital status, sexual orientation, parental status ~~((or))~~, political ideology, or the presence of any sensory, mental or physical handicap or the use of a trained guide dog by a blind or deaf person in the terms, conditions or privileges of the sale, rental, lease, sublease, assignment, transfer or other disposition of any such real property, including but not limited to the setting of rates for rental or lease, or establishment of damage deposits, or other financial conditions for rental or lease, or in the furnishings of facilities or services in connection therewith.

B. It is an unfair practice to unreasonably prohibit modifications needed by a handicapped tenant. Whether or not the landlord permits tenants in general to make alterations or additions to a structure or fixtures, it is an unfair practice for a landlord to refuse to allow a person to make alterations or additions, which are necessary to make the rental property accessible by handicapped persons, under the following conditions:

1. The landlord is not required to pay for the alterations or additions.

2. The landlord may reserve the right to approve the design, quality, and construction of the alterations or additions in order to minimize damage to the building and enforce standards of quality and architectural compatibility.

**COMMITTEE REASONING**

14.08.040 Unfair Practices -  
Generally

A. The Committee recommends including sensory, mental or physical handicap as a protected class.

B. The Committee recommends adding a new paragraph to this section which would make it an unfair practice for a landlord to prohibit a handicapped tenant from making alterations to make the dwelling accessible. The alterations would be at the tenant's expense and the landlord may oversee the work. These provisions are consistent with the Washington Administrative Code.

The Committee does not recommend the proposal of the HRRP to place the responsibility for retrofitting upon the property owner. The Committee recommends strict enforcement of the City policy of requiring handicap accessibility in new construction as opposed to the retrofitting proposal.

Proposed Amendments	Reasoning
<p>Subsection B of Section 14.08.060 of the Seattle Municipal Code is amended as follows:</p> <p>B. Use of any form of application for such financial assistance or make any record of inquiry in connection with applications for such financial assistance which expresses, directly or indirectly, any limitation, specification, or discrimination because of race, color, religion, ancestry, national origin, sex, age, marital status, sexual orientation, parental status or political ideology, <u>or the presence of any actual or perceived sensory, mental or physical handicap or the use of a trained guide dog by a blind or deaf person</u>, unless required or authorized by local, state or federal laws or agencies for the purpose of preventing discrimination in real property; provided that nothing in this provision shall prohibit any party to a credit transaction from requesting designation of marital status for the purpose of considering application of community property law to the individual case or from taking reasonable action thereon or from requesting information regarding age or parental status when such information is necessary to determine the applicant's ability to repay the loan.</p>	<p>14.08.060</p> <p>*B. This inclusion of the protected class in this subsection was discussed and approved for amendment to this section along with 14.08.040. It is included here and in all subsequent subsections where the protected classes are listed.</p>
<p>Section 15. Subsections A and B of Section 14.08.070 of the Seattle Municipal Code are amended as follows:</p> <p>A. Require any information, make or keep any record, or use any form of application containing questions or inquiries concerning race, color, religion, ancestry, national origin, age, sex, marital status, sexual orientation, parental status ((e*)), political ideology or <u>the presence of any actual or perceived sensory, mental or physical handicap, or the use of a trained guide dog by a blind or deaf person</u> in connection with the sale, rental, lease or sublease of any real property unless used solely:</p> <ol style="list-style-type: none"><li>1. For making reports required by agencies of the federal, state or local government for the purposes of preventing and eliminating discrimination or of overcoming its effects or for other purposes authorized by federal, state or local agencies or laws or rules adopted thereunder.</li><li>2. As to "marital status," for the purpose of determining applicability of community property law to the individual case, and</li><li>3. As to "age," for the purpose of determining that the applicant has attained the age of majority;</li></ol> <p>B. Publish, circulate, issue or display or cause to be published, circulated, issued or displayed, any communication, notice, advertisement, or sign of any kind relating to the sale, rental, lease, sublease, assignment, transfer, or listing</p>	<p>*14.08.070</p> <p>A. This again is added to ensure that handicap is a part of all sections listing the protected classes.</p> <p>B. Amendment to include handicap as protected class.</p>
	<p>* 11-30-84, pp. 2-4. ** 10-12-84, pp. 2-4.</p>

AMENDMENTS RECOMMENDED BY C.D.

Section 12. Subsection B of Section 14.08.060 of the Seattle Municipal Code is amended as follows:

B. Use of any form of application for such financial assistance or make any record of inquiry in connection with applications for such financial assistance which expresses, directly or indirectly, any limitation, specification, or discrimination because of race, color, religion, ancestry, national origin, sex, age, marital status, sexual orientation, parental status or political ideology, or the presence of any sensory, mental or physical handicap or the use of a trained guide dog by a blind or deaf person, unless required or authorized by local, state or federal laws or agencies for the purpose of preventing discrimination in real property; provided that nothing in this provision shall prohibit any party to a credit transaction from requesting designation of marital status for the purpose of considering application of community property law to the individual case or from taking reasonable action thereon or from requesting information regarding age or parental status when such information is necessary to determine the applicant's ability to repay the loan.

Section 13. Subsections A and B of Section 14.08.070 of the Seattle Municipal Code are amended as follows:

A. Require any information, make or keep any record, or use any form of application containing questions or inquiries concerning race, color, religion, ancestry, national origin, age, sex, marital status, sexual orientation, parental status ((or)), political ideology or the presence of any sensory, mental or physical handicap, or the use of a trained guide dog by a blind or deaf person in connection with the sale, rental, lease or sublease of any real property unless used solely:

1. For making reports required by agencies of the federal, state or local government for the purposes of preventing and eliminating discrimination or of overcoming its effects or for other purposes authorized by federal, state or local agencies or laws or rules adopted thereunder,

2. As to "marital status," for the purpose of determining applicability of community property law to the individual case, and

3. As to "age," for the purpose of determining that the applicant has attained the age of majority;

B. Publish, circulate, issue or display or cause to be published, circulated, issued or displayed, any communication, notice, advertisement, or sign of any kind relating to the sale, rental, lease sublease, assignment, transfer, or listing of real property which indicate any preference, limitation or specification based on race, color, religion, ancestry, national origin, age, sex, marital status, sexual orientation, parental status ((or)), political ideology or the presence of any sensory, mental or physical handicap, or the use of a trained guide dog by a blind or deaf person.

Section 14. Subsections A and B of Section 14.08.080 of the Seattle Municipal Code are amended as follows:

A. Promote, induce or attempt to promote or induce any person to sell or rent any real property by representation regarding the entry or prospective entry into the neighborhood or area of a person or persons of a particular race, color, religion, ancestry, national origin, age, sex, marital status, sexual orientation, parental status ((or)), political ideology or the presence of any sensory, mental or physical handicap, or the use of a trained guide dog by a blind or deaf person.

B. Show or otherwise take any action, the design or effect of which is to steer a person or persons to any section of the City or to particular real property in a manner tending to segregate or maintain segregation on the basis of race, color, religion, ancestry, national origin, age, sex, marital status, sexual orientation, parental status ((or)), political ideology or the presence of any sensory, mental or physical handicap, or the use of a trained guide dog by a blind or deaf person.

14.08.060 Discrimination in application for financial assistance

B. Consistent with the recommendation for 14.08.040 to include handicap as a protected class.

14.08.070 Unfair Inquiries

A. Consistent with the recommendation for 14.08.040 to include handicap as a protected class.

B. Consistent with the recommendation for 14.08.040 to include handicap as a protected class.

14.08.080 Unfair inducement to rent or sell

A. Consistent with the recommendation to include handicap as a protected class.

B. Consistent with the recommendation to include handicap as a protected class.

Proposed Amendments

Reasoning

of real property which indicate any preference, limitation or specification based on race, color, religion, ancestry, national origin, age, sex, marital status, sexual orientation, parental status ((~~or~~)), political ideology((+)) or the presence of any actual or perceived sensory, mental or physical handicap, or the use of a trained guide dog by a blind or deaf person;

14.08.080

A. Amendment to include handicap as protected class.

Section 16. Subsections A and B of Section 14.08.080 of the Seattle Municipal Code are amended as follows:

A. Promote, induce or attempt to promote or induce any person to sell or rent any real property by representation regarding the entry or prospective entry into the neighborhood or area of a person or persons of a particular race, color, religion, ancestry, national origin, age, sex, marital status, sexual orientation, parental status ((~~or~~)), political ideology ((+)) or the presence of any actual or perceived sensory, mental or physical handicap, or the use of a trained guide dog by a blind or deaf person;

B. Amendment to include handicap as protected class.

B. Show or otherwise take any action, the design or effect of which is to steer a person or persons to any section of the city or to particular real property in a manner tending to segregate or maintain segregation on the basis of race, color, religion, ancestry, national origin, age, sex, marital status, sexual orientation, parental status ((~~or~~)), political ideology((+)) or the presence of any actual or perceived sensory, mental or physical handicap, or the use of a trained guide dog by a blind or deaf person.

Section 17. Section 14.08.090 of the Seattle Municipal Code is amended as follows:

14.08.090. Denial of Right Granted Under this Chapter - Prohibited.

14.08.090

Amendment to include handicap as protected class.

No person, whether or not acting for profit, shall harass, intimidate, or otherwise abuse or discriminate against any person or person's friends or associates because of ((~~the~~)) race, color, religion, ancestry, national origin, age, sex, marital status, sexual orientation, parental status ((~~or~~)), political ideology or the presence of any actual or perceived sensory, mental or physical handicap, or the use of a trained guide dog by a blind or deaf person, ((~~of such person or persons or their friends or associates~~)) with the purpose or effect of denying to such person or persons the rights granted in this chapter or the right to quiet or peaceful possession or enjoyment of any real property.

**AMENDMENTS RECOMMENDED BY COMMITTEE**

14.08.090. Denial of Right Granted  
Under this Chapter-  
Prohibited.

No person, whether or not acting for profit, shall harass, intimidate, or otherwise abuse or discriminate against any person or person's friends or associates because of ~~((the))~~ race, color, religion, ancestry, national origin, age, sex, marital status, sexual orientation, parental status ~~((or))~~, political ideology or the presence of any sensory, mental or physical handicap, or the use of a trained guide dog by a blind or deaf person, ((of such person or persons or their friends or associates)) with the purpose or effect of denying to such person or persons the rights granted in this chapter or the right to quiet or peaceful possession or enjoyment of any real property.

**COMMITTEE REASONING**

14.08.090 Denial or right granted  
under this chapter -  
Prohibited

Consistent with the recommendation to include handicap as a protected class.

Open Housing

Proposed Amendments

Reasoning

Section 14.08.120 of the Seattle Municipal Code (Ordinance 104839 § 4(c)) is amended as follows:

The charging party 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, in the original charge. The charging party may also amend a charge to include allegations of additional discriminatory acts and/or retaliation which arose after the filing of the original charge and prior to the Department's issuance of findings of fact and a determination with respect to the original charge. Such amendments shall relate back to the date the charge was first filed and may be made at any time during the investigation of the original charge so long as the Director will have adequate time to investigate such additional allegations and the parties times to present the Director with evidence concerning such allegations before the issuance of findings of fact and a determination.

14.08.120

This amendment was discussed and proposed simultaneously with the discussion of 14.05.100 permitting amending charges. The intent to include it is identical with that for 14.04.100.

Section 19. Section 14.08.130 of the Seattle Municipal Code is amended by adding a new Subsection E as follows:

E. While fair and equitable settlements are encouraged, settlements must be voluntarily entered into by the parties, and charging parties shall not be penalized for rejecting a settlement offer.

14.08.130

\*E. This statement is identical to the statement in 14.04.140A requiring that the charging party agree before a settlement can be reached. It was proposed for the same purposes and was part of the discussion of that subsection.

\*10-19-84, pp.5-9;  
10-26-84, pp.1-8;  
11-2-84, pp.4-8.



AMENDMENTS RECOMMENDED BY COMMITTEE

Section 16. Section 14.08.120 of the Seattle Municipal Code (Ordinance 104839 § 4(c)) is amended as follows:

The charging party 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, in the original charge. For jurisdictional purposes, such ((Such)) amendments shall relate back to the date the charge was first filed. ((and)) Such amendments may be made at any time during the investigation of the original charge so long as the Director will have adequate time to investigate such additional allegations and the parties will have adequate time to present the Director with evidence concerning such allegations before the issuance of findings of fact and a determination.

14.08.130

E. DIVIDED REPORT

Section 17. Section 14.08.140 of the Seattle Municipal Code is amended to add a new Subsection C, as follows:

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 14.08.150. 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.

COMMITTEE REASONING

14.08.120 Amendments to charge

Please see 14.04.100 for the discussion of the Committee's recommendation not to permit charging parties to file subsequent charges by amending an original charge.

14.08.130 Notice of charge and investigation

Please refer 14.04.110 for a discussion of the Committee's divided report.

14.08.140 Finding of Facts and determination of reasonable cause or no reasonable cause

Please refer to the discussion of 14.04.120 for a discussion of the Committee's recommendation to add this amendment.

Proposed Amendments

Reasoning

Section 20. Subsection A of Section 14.08.160 of the Seattle Municipal Code (Ordinance 104839 § 8) is amended as follows:

A. If a determination is made that reasonable cause exists to believe that an unfair housing practice has occurred, the Director shall endeavor to eliminate the unfair practice by conference, conciliation and persuasion which may include as a condition of settlement: the elimination of the unfair housing practice; ((7)) rent refunds or credits; ((7)) reinstatement to tenancy; ((7)) affirmative recruiting or advertising measures; ((7)) incidental and consequential expenditures and losses; the difference between the asking price of the housing at the time the awardee's offer was rejected and the final selling price; real estate and rental agency fees; attorney's fees and costs; interest on all out-of-pocket expense awards; damages for mental and physical anguish, pain and suffering; damages for embarrassment, humiliation and indignity; punitive damages; separate non-nominal damages for violation of civil rights, or such other requirements as may lawfully be agreed upon by the parties and the Director. Any settlement agreement shall be reduced to writing and signed by the Director, the charging party, and the respondent. The charging party shall not be penalized for rejecting a conciliation offer in order to seek full relief through pursuing the full administrative process authorized by this chapter. If a conciliation agreement is reached, an ((Am)) 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. If no agreement can be reached, a finding to that effect shall be made and reduced to writing, with a copy thereof furnished to the charging party and the respondent.

\*\*14.08.160

A. The language proposed to be added here is identical to that proposed for the remedies sections to the Employment ordinance at section 14.04.140 except for the language relating specifically to Housing remedies.

The remedies proposed to be included here are the same as the awards provided for in the HRD rules or which are authorized at the State or federal level.

Those remedies such as attorney's fees and punitive damages are not provided for in the current rules and their inclusion here is for the identical reasons set out in the discussion of remedies in subsection 14.04.140A.

\*\* 10-19-84, pp. 5-9.  
10-26-84, pp. 1-2.

AMENDMENTS RECOMMENDED BY COMMITTEE

Section 18. Subsection A of Section 14.08.160 of the Seattle Municipal Code (Ordinance 104839 § 8) is amended as follows:

A. If a determination is made that reasonable cause exists to believe that an unfair housing practice has occurred, the Director shall endeavor to eliminate the unfair practice by conference, conciliation and persuasion. ~~((which may include as a condition))~~ Conditions of settlement may include (but are not limited to)

~~((such other requirements as may lawfully be agreed upon by the parties and the Director.))~~ the elimination of the unfair housing practice, rent refunds or credits, reinstatement to tenancy, affirmative recruiting or advertising measures, attorneys fees 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 one thousand dollars. Further, up to one thousand dollars may be awarded for loss of the right to be free from discrimination in real estate transactions. 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. If no agreement can be reached, a finding to that effect shall be made and reduced to writing, with a copy thereof furnished to the charging party and the respondent.

COMMITTEE REASONING

Section 18. 14.08.160 Determination of Reasonable Cause - Conciliation and Settlement

A. In addition to amending this section to include the remedies of attorney's fees as in the FEPO. The Committee recommends adding the remedy of an award of up to one thousand dollars for violation of the right to be free from discrimination in real estate transactions. This amendment is identical to state law. This amendment is added to all other sections of the OHO where remedies are set out.

The decision of the Committee to not recommend adding the other proposed remedies for violation of the OHO is not intended to preclude the HRD from establishment of conditions of settlement not specifically set out in this ordinance. Those conditions of settlement are intended to be discretionary with the HRD. To the extent that remedies and damages must be specifically provided for by legislation of the City Council those conditions, remedies and damages are rejected.

The Committee does not recommend that the charging party be required to approve a conciliation offer. HRD should continue to have the discretion to enter into a conciliation agreement whether or not the charging party agrees. The provision for a conciliation agreement occurs after a determination that reasonable cause exists to believe that an unfair practice has occurred.

Proposed Amendments

Reasoning

Section 21. Subsection A of Section 14.08.170 of the Seattle Municipal Code is amended as follows:

A. Following submission of the investigatory files from the Director, 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 therefore 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 therefore shall be filed with the Department, charging party and the respondent.))~~

Section 22. Subsection C of Section 14.08.180 of the Seattle Municipal Code (Ordinance 104839 § 10) is amended as follows:

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 housing 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, and secure compliance therewith, including but not limited to ~~(( ))~~: rent; ~~((refund))~~ refunds or ~~((credit))~~ credits; reinstatement to tenancy; ~~(( ))~~ affirmative recruiting or advertising measures; ~~(( ))~~ incidental and consequential expenditures and losses; the difference between the asking price of at housing at the time the awardee's offer was rejected and the final selling price; real estate and rental agency fees; attorney's fees and costs; interest on all out-of-pocket expense awards; damages for mental and physical anguish, pain and suffering; damages for embarrassment, humiliation and indignity; punitive damages; separate, non-nominal damages for violation of civil rights, or to take such other action as in the judgment of the Hearing Examiner (or panel majority) will effectuate the purposes of this chapter which may include the requirement of report on the matter of compliance.

Section 23. Section 14.08.190 of the Seattle Municipal Code is amended by adding a new Subsection H as follows:

H. Be construed to prohibit treating handicapped persons more favorably than non-handicapped persons.

14.08.170

\*The deletion of this proviso which requires the City Attorney to file a statement of reasons for determining that there is no legal basis for a complaint is recommended for this subsection for precisely the same reasons as stated in the discussion of 14.04.170A.

\*\* 14.08.180

C. This amendment is proposed to set out the remedies available to the Hearing Examiner consistent with the remedies proposed to be available for all of the other stages of the discrimination investigation.

\*\*\*14.08.190

H. This amendment is proposed to be added to the section entitled "Exclusions". That section states the exceptions to the application of the Housing Ordinance.

This amendment is proposed because other sections of the nondiscrimination ordinances may be interpreted as prohibiting advertising or holding housing out as handicapped accessible.

\*12-7-84, p. 2-4.

\*\*10-19-84, pp.5-9.

\*\*\*11-30-84, p.3.

**AMENDMENTS RECOMMENDED BY COMMITTEE**

Section 19. Subsection C of Section 14.08.180 of the Seattle Municipal Code (Ordinance 104389 § 10) is amended as follows:

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 housing 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, and secure compliance therewith, including but not limited to, rent refund, or credit, reinstatement to tenancy, affirmative recruiting and advertising measures, attorneys fees, or to take such other action as in the judgment of the Hearing Examiner (or panel majority) 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 one thousand dollars. Further, up to one thousand dollars may be awarded for loss of the right to be free from discrimination in real estate transactions. An order ((which)) may include the requirement for report on the matter of compliance.

14.08.190. Exclusions.

Nothing in this chapter shall:

H. Be construed to prohibit treating handicapped persons more favorably than non-handicapped persons.

I. Be construed to protect criminal conduct.

J. Prohibit any person from limiting the rental or occupancy of housing accommodations on the basis of conduct by an occupant or prospective occupant which involves the use of force or violence or advocacy directed to producing or inciting imminent force or violence to the person or property of the owner, manager, or other person having the right to sell, rent, lease, assign, transfer or otherwise dispose of the real property occupied or sought to be occupied.

**COMMITTEE REASONING**

14.08.170 Complaint and Hearing

The decision not to recommend deletion of the final sentence here is consistent with the decision for 14.04.170. Please see the discussion for that section.

14.08.180 Decision and Order

The remedies recommended for this section are those available to the Hearing Examiner and Human Rights Commission if the Director is unable to conciliate and settle a case.

The Committee recommends that the remedies be consistent with the remedies recommended for all other relevant sections of the OHO.

14.08.190 Exclusions

- H. This new paragraph permitting "treating handicapped persons more favorably than non-handicapped" is proposed to permit property owners to designate housing units specifically or exclusively for the handicapped.
- J. This amendment is proposed by the Committee to be added because the City Attorney has stated that the deletion of the proviso relating to force or violence in the political ideology definition may be construed as protecting force or violence against a landlord or the property of the landlord. A question exists as to whether this amendment would be necessary if the definition of "political ideology" proposed by the City Attorney in January 13, 1986 letter is adopted by the Committee.