## REVISED STAFF REPORT

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| **Agenda Item:** | 6 | **Name:** | Andrew Kim |
| **Proposed No.:** | 2019-0331 | **Date:** | November 5, 2019 |

**COMMITTEE ACTION**

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| ***Proposed Substitute Ordinance 2019-0331.2 to amend definitions to “service or assistive animal”, “sexual orientation”, and “gender identity” related to the county’s non-discrimination ordinances, passed out of committee on November 5, 2019 with a “Do Pass” recommendation. The Ordinance was amended in committee with Striking Amendment S1 to do the following:**** ***Amend “gender identity” to “gender identity or expression” to be consistent with county charter;***
* ***Amend the definition of “sexual orientation” and “gender identity or expression” with the most current understanding from community stakeholders;***
* ***Amend other sections of King County Code (other than non-discrimination ordinances) that reference “sexual orientation”, “gender identity or expression”, and “service or assistive animal” for definition consistency; and***
* ***Make other technical corrections and edits to support the above changes.***
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**SUBJECT**

Proposed Ordinance 2019-0331 would amend King County Code to amend definitions related to the county’s non-discrimination ordinances and make other technical corrections.

**SUMMARY**

The proposed ordinance would amend the county’s non-discrimination ordinances to modify the definition of “service or assistive animals” to comport with state law. This was prompted by the enactment of SHB 2822 in 2018 to limit the definition of service animals to a dog or miniature horse beginning January 1, 2019. The proposed ordinance would also amend the county’s non-discrimination ordinances to modify the definition of “sexual orientation” to be consistent with current understanding from community stakeholders by adopting the definition as used by the City of Seattle’s All-Gender Restroom Ordinance and taking out “gender identity” from the definition and adding the term as a separate protected class.

Striking Amendment S1 would amend “gender identity” to “gender identity or expression” to be consistent with county charter; amend the definition of “sexual orientation” and “gender identity or expression” with most current understanding from community stakeholders; amend the definition of “sexual orientation”, “gender identity or expression”, and “service or assistive animal” in other sections of King County Code; and make other technical corrections and edits to support the definition changes.

**BACKGROUND**

**King County Non-Discrimination Ordinances** Since 1981, the county has enacted various ordinances to prohibit discrimination under the jurisdictional purview of the county which includes unincorporated King County and King County as a governmental organization with employees and contractors. These non-discrimination ordinances include:

* **Fair Housing** (Ordinance 5280; K.C.C. 12.20) enacted in 1981 to prohibit discrimination in the rental, sale or financing of housing in unincorporated King County;
* **Fair Employment** (Ordinance 7430; K.C.C. 12.18) enacted in 1985 to prohibit private employers in unincorporated King County with eight or more employees and King County government as an employer from discriminating against their employees;
* **Public Accommodations** (Ordinance 8625; K.C.C. 12.22) enacted in 1988 to prohibit discrimination in public establishments in unincorporated King County, such as hotels, restaurants, bars, sporting arenas, theaters, retail stores and mobile home parks;
* **Fair Contracting** (Ordinance 13981; K.C.C. 12.17) enacted in 2000 to prohibit discrimination by private parties in contracting for goods and services greater than $5,000 in unincorporated King County and discrimination by King county government in its own contracting;
* **Citizen and Immigrant Status** (Ordinance 18665, K.C.C. 2.15) enacted in 2018 to prohibit from conditioning King County services on immigration status;
* **Non-Discrimination By County Contractors** (Ordinance; K.C.C. 12.16) enacted in 1995 to prohibit contractors, subcontractors and vendors doing business with King County government from any discriminatory practices;
* **Non-Discrimination By County Contractors in Employee Benefits** (Ordinance 14823, K.C.C. 12.19) enacted in 2003 to prohibit county contractors from discrimination in the provision of employee benefits between employees with spouses and employees with domestic partners; and
* **Discrimination, Harassment, and Inappropriate Conduct** (Ordinance 18757, K.C.C. 3.12D) enacted in 2018 to prohibit discrimination, harassment, and inappropriate conduct toward any employee in King County government.

Fair Housing, Fair Employment, Public Accommodations, Fair Contracting, and Citizenship and Immigrant Status non-discrimination ordinances are enforced by the Office of Civil Rights[[1]](#footnote-1). The non-discrimination ordinances related to county contractors are enforced by the Department of Executive Services – Finance and Business Operation Division and the Discrimination, Harassment, and Inappropriate Conduct ordinance is enforced separately by each of the departments managed by county electeds.

**Service or Assistive Animals** In 2018, Washington State enacted SHB 2822[[2]](#footnote-2) which did the following:

* Limited the definition of service animal as applied to public accommodations under Washington's Law Against Discrimination to dogs and miniature horses specifically trained to perform tasks related to an individual's disability;
* Retained a requirement for reasonable modifications in a public accommodation to permit the use of a miniature horse as a service animal;
* Authorized limited inquiry by a public accommodation's staff or investigating officer to determine if a person misrepresents an animal as a service animal; and
* Established a $500 civil infraction of misrepresenting an animal as a service animal.

In the public testimony section of the final senate bill report[[3]](#footnote-3), it states that the impetus for this bill came from a constituent who saw an issue with individuals bringing untrained animals into public accommodations as service animals and causing disruption. The public testimony further stated that this has resulted in unfair treatment of individuals with legitimate disabilities who have trained service animals. The public testimony section also included the opposition’s position which stated that there are other animals (other than dogs and miniature horses) currently being used as emotional support animals, and excluding them as service animals could be an issue.

**Sexual Orientation and Gender Identity or Expression** Title VII of the Civil Rights Act of 1964 protects individuals from discrimination or harassment based on the following protected classes: (1) race, (2) religion, (3) national origin, and (4) sex. The list of protected classes expanded to include the following through additional anti-discrimination laws: (5) age, (6) familial status, (7) pregnancy, (8) disability, (9) veteran, and (10) genetic information.

While Title VII of the Civil Rights Act of 1964 does not explicitly include sexual orientation or gender identity in its list of protected bases, the U.S. Equal Employment Opportunity Commission (EEOC), consistent with Supreme Court case law holding that employment actions motivated by gender stereotyping are unlawful sex discrimination and other court decisions, interprets the statute's sex discrimination provision as prohibiting discrimination against employees on the basis of sexual orientation and gender identity.[[4]](#footnote-4)

In 2006, Washington State amended the Washington Law Against Discrimination (WLAD)[[5]](#footnote-5) to prohibit discrimination on the basis of sexual orientation and gender identity in the areas of employment, housing, public accommodation, credit, and insurance. Subsequently, in 2006, the county adopted Ordinance 15399 to modify the definition of sexual orientation and gender identity throughout the county’s non-discrimination ordinances to align with state law. Moreover, in 2008, voters approved a ballot proposition[[6]](#footnote-6) to amend the antidiscrimination provisions of the county charter (Section 840) to also include sexual orientation and gender identity or expression as protected classes.

**ANALYSIS**

**Service or Assistive Animals** The proposed ordinance would amend the county’s non-discrimination ordinances[[7]](#footnote-7) to modify the definition of “service or assistive animals” to align with the new definition in state law. Executive staff stated that this was prompted by the enactment of SHB 2822 in 2018 to limit the definition of service animals to a dog or miniature horse beginning January 1, 2019.

Council staff determined that the proposed ordinance erroneously did not modify other sections of King County Code that also included definition of “service or assistive animal”. The striking amendment (Attachment 2 to this staff report) would amend other sections of King County Code that also include the definition of “service or assistive animal” for definitional consistency. However, the striking amendment does not include changes to the definition included in Title 11 related to Animal Care and Control. Executive staff stated there Regional Animal Services of King County (RASKC) is working with the county’s Hearing Examiner to do a comprehensive review Title 11 and that review effort would also include modifying the definition of “service or assistive animal” to align with state law. Executive staff stated that a proposed ordinance as a result of the review would be transmitted to council for action in the near future.

**Complaints/Inquiries** Executive staff has stated that since May 2018, there have been no inquiries or complaints regarding discrimination related to “service or assistive animal”. The staff did receive two inquiries related to SHB 2822 but those inquiries were not related to discrimination.

**Community Outreach** Executive staff has also stated that community outreach was not conducted to gather input on the changes to the definition of “service or assistive animal”. However, executive staff stated that internal and external stakeholders were consulted, such as the Facilities Management Division and the King County Library System. Both agencies shared the difficultly of navigating different protections between King County and the City of Seattle, particularly related to the term “therapeutic companion animal” in the current definition. Executive staff stated that this issue also informed and prompted the proposed ordinance to change the definition to align with state law. Executive staff stated this would ensure clarity, particularly when it comes to constituents facing different rules for King County verses City of Seattle buildings.

**Sexual Orientation and Gender Identity or Expression** Executive staff stated that the proposed ordinance would amend the county’s non-discrimination ordinances to modify the definition of “sexual orientation” to be consistent with current understanding from community stakeholders. The proposed ordinance would adopt the definition as used by the City of Seattle’s All-Gender Restroom Ordinance[[8]](#footnote-8) and the City of Seattle’s Fair Employment Practices Ordinance[[9]](#footnote-9) by taking out “gender identity” from the definition of “sexual orientation” and adding the term as a separate protected class, along with other changes. It should be noted that this definition is varied from the definition used by the State of Washington and executive staff stated that this was intentional since the City of Seattle’s definitions were the most accurate definition based on current understanding from community stakeholders. The changes to the definition as included in the proposed ordinance is shown below:

*"Sexual orientation" means actual or perceived male or female heterosexuality, homosexuality((~~,~~)) or bisexuality and ((~~gender identity. As used in this definition "gender identity" means having or being perceived as having a gender identity different from that traditionally associated with the sex assigned to that person at birth. Protection associated with "gender identity" includes self-image, appearance, behavior or expression~~)) includes an individual's attitudes, preferences, beliefs and practices pertaining to the individual's own gender identity or expression.*

*"Gender identity" means an individual's gender-related identity, appearance or expression, whether or not associated with the individual’s biological sex or sex at birth, and includes an individual's attitudes, preferences, beliefs and practices pertaining to the individual's own gender identity or expression.*

Council staff determined that the proposed ordinance erroneously did not modify other sections of King County Code that also included definition of “sexual orientation” and/or “gender identity”. The striking amendment (Attachment 2 to this staff report) would amend other sections of King County Code that also include the definition of “sexual orientation” and “gender identity” for definitional consistency.

**Complaints/Inquiries** Executive staff has stated that since May 2018, there have been no inquiries or complaints regarding discrimination related to “sexual orientation” and/or “gender identity”.

**Community Outreach** Executive staff has also stated that community outreach was not conducted to gather input on the changes to the definition of “sexual orientation” and/or “gender identity” since the proposed ordinance adopts the City of Seattle’s definition. Council staff reached out to the City of Seattle’s Office for Civil Rights and they confirmed that their definition for “sexual orientation” and “gender identity” was amended in 2015 with the enactment of the All-Gender Restroom Ordinance. The City of Seattle stated that the All-Gender Restroom Ordinance was developed with the participation of community members from organizations and groups including the Seattle LGBTQ Commission, Seattle Women’s Commission, Ingersoll Gender Center, Gender Justice League, and Equal Rights Washington.

**Additional Analysis** Executive staff stated that the Civil Rights Commission was not consulted on the proposed ordinance.

Executive staff also stated that the Office of Civil Rights plans to use its website and the Office of Equity and Social Justice newsletter to communicate changes from the proposed ordinance to the public and relevant stakeholders. In addition, the Office of Civil Rights will also update their website, appropriate materials and update and train internal departments as needed. Lastly, executive staff state that Office of Civil Rights staff are up to date on the proposed changes and since they consult and collaborate with civil rights staff in other jurisdictions within the State of Washington they will not require specialized training to be informed of the new definitions.

**AMENDMENT**

Striking Amendment S1 to the proposed ordinance would do the following:

* Amend “gender identity” to “gender identity or expression” to be consistent with county charter;
* Amend the definition of “sexual orientation” and “gender identity or expression” with the most current understanding from community stakeholders;
* Amend other sections of King County Code (other than non-discrimination ordinances) that reference “sexual orientation”, “gender identity or expression”, and “service or assistive animal” for definition consistency; and
* Make other technical corrections and edits to support the above changes.

Council staff has determined that the definition of “sexual orientation” and “gender identity or expression” included in the striking amendment is a more current definition as provided by the City of Seattle’s Office for Civil Rights and is different than the definition included in the current All-Gender Restroom Ordinance. City of Seattle stated that this new definition has evolved since the All-Gender Restroom Ordinance was adopted in 2015 and they hope to make similar changes in the near future. The City of Seattle stated the definition proposed in the striking amendment includes input from community members from organizations and groups including the Seattle LGBTQ Commission, Seattle Women’s Commission, Ingersoll Gender Center, Gender Justice League, and Equal Rights Washington.

"Sexual orientation" means an individual’s attitudes, preferences, beliefs and practices pertaining to the individual's own sexual orientation including, but not limited to, heterosexuality, homosexuality and bisexuality ((~~or homosexuality, and includes a person's attitudes, preferences, beliefs and practices pertaining to sex~~)).

"Gender identity or expression" means an individual's gender-related identity, appearance or expression, whether or not associated with the individual’s sex assigned at birth, and includes an individual's attitudes, preferences, beliefs and practices pertaining to the individual's own gender identity or expression.

Title Amendment T1 would amend the title to support Striking Amendment S1.

1. Through the 2017-2018 Biennial Budget (Ordinance 18409), the council moved the functions of the office of civil rights to the office of equity and social justice, which administratively changed the office of civil rights to a civil rights program. Proposed Ordinance 2018-0485 was transmitted by the executive to formally codify this administrative change, however, the council did not taken action on this item and the legislation has lapsed. [↑](#footnote-ref-1)
2. Chapter 176, Laws of 2018. [↑](#footnote-ref-2)
3. <http://lawfilesext.leg.wa.gov/biennium/2017-18/Pdf/Bill%20Reports/Senate/2822-S%20SBR%20APS%2018.pdf>. [↑](#footnote-ref-3)
4. “What You Should Know About EEOC and the Enforcement Protections for LGBT Workers”. *U.S. Equal* *Employment Opportunity Commission.* <https://www.eeoc.gov/eeoc/newsroom/wysk/enforcement_protections_lgbt_workers.cfm>. [↑](#footnote-ref-4)
5. RCW 49.60. [↑](#footnote-ref-5)
6. Ordinance 16204, enacted July 25, 2008. [↑](#footnote-ref-6)
7. K.C.C. Chapters 12.17, 12.18, 12.20, and 12.22. [↑](#footnote-ref-7)
8. Seattle Municipal Code Chapter 14.07, enacted in August 2015. [↑](#footnote-ref-8)
9. Seattle Municipal Code Chapter 14.04. [↑](#footnote-ref-9)