



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

October 31, 2000

Ordinance 13981

Proposed No. 1999-0627.2

Sponsors Gossett

1 AN ORDINANCE relating to discrimination in contracting;
2 prohibiting discrimination in contracting; providing
3 remedies for victims of that discrimination; adding a new
4 chapter to the King County Code and prescribing penalties.

5
6 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

7 SECTION 1. Statement of purpose. This ordinance is an exercise of the police
8 power of King County for the protection of the public welfare, health, peace and safety of
9 the residents of King County and in fulfillment of the provisions of the constitution of
10 this state. The King County council hereby finds and declares that practices of
11 discrimination in contracting by business entities against any person on the basis of race,
12 color, age, gender, marital status, sexual orientation, religion, ancestry, national origin,
13 disability or the use of a service or assistive animal by an individual with a disability
14 constitute matters of local concern and are contrary to the public welfare, health, peace
15 and safety of the residents of King County. This ordinance applies to: King County when
16 King County is acting as a contractor or is awarding a contract; to other contractors,
17 subcontractors, suppliers, materialmen, bonding agencies, contract agencies and other

18 business entities and parties doing business in unincorporated King County, and shall be
19 liberally construed for accomplishment of its policies and purposes. Nothing in this
20 ordinance shall be deemed to deny any persons the right to institute any action or to
21 pursue any civil or criminal remedy for the violation of those persons' civil rights.
22 Nothing in this ordinance is intended to be nor shall be construed to create or form the
23 basis for any liability on the part of King County, or its officers or agents, for any injury
24 or damage resulting from or by reason of any act or omission in connection with the
25 implementation or enforcement of this chapter on the part of King County by its officers,
26 employees or agents. Nothing in this ordinance shall be presumed to toll the statute of
27 limitations for any claims under federal or state statute. Nothing in this ordinance shall
28 be construed to prohibit or apply to actions taken in good faith against any person by a
29 contractor based solely upon their performance, qualifications, or ability to perform in
30 accordance with the terms of a contract or for other nondiscriminatory reasons.

31 NEW SECTION. SECTION 2. **Definitions.** The definitions in this section
32 apply throughout this chapter unless the context clearly requires otherwise.

33 A. "Business enterprise" means a licensed business organization located in or
34 doing business in unincorporated King County or that is required to comply with this
35 chapter by the terms of an agreement with King County under section 11 of this
36 ordinance.

37 B. "Charging party" means the person aggrieved by an alleged unfair contracting
38 practice or the person making a charge on another person's behalf, or the office of civil
39 rights enforcement when the office of civil rights enforcement files a charge.

40 C. "Commercially significant contract" means a contract for the provision of

41 services, including but not limited to construction services, consulting services or
42 bonding or other financial services, or the sale of goods that exceeds five thousand
43 dollars.

44 D. "Contract" means an agreement to perform a service or provide goods that
45 entails a legally binding obligation and that is performed or intended to be wholly or
46 partly performed within, unincorporated King County or that includes King County as a
47 party. "Contract" does not include the following: a contract for the purchase and sale of
48 residential real estate; a contract for employment; and a collective bargaining agreement.

49 E. "Contracting agency" means a person who for compensation engages in
50 recruiting, procuring, referral or placement of contracts with a contractor, and that is
51 doing business in King county.

52 F. "Contractor" means a business enterprise, including but not limited to a
53 company, partnership, corporation or other legal entity, excluding real property lessors
54 and lessees, contracting to do business within the county. "Contractor" includes but is
55 not limited to a public work contractor, a consultant contractor, a providers of
56 professional services, a service agency, a vendor, and a supplier selling or furnishing
57 materials, equipment, goods or services, but does not include a governmental agency
58 other than King County.

59 G. "Discriminate," "discrimination" and "discriminatory act" mean a action, other
60 than an action taken in accordance with a lawful affirmative action program, or failure to
61 act whether by itself or as part of a practice, the effect of which is to adversely affect or
62 differentiate between or among individuals or groups of individuals, by reasons of race,
63 color, age, gender, marital status, sexual orientation, religion, ancestry, national origin,

64 disability or the use of a service or assistive animal by an individual with a disability,
65 unless based upon a bona fide contractual qualification.

66 H. "Party" includes the person making a charge alleging an unfair contracting
67 practice and the person alleged to have committed an unfair contracting practice.

68 I. "Person" includes one or more individuals, partnerships, business enterprises,
69 associations, organizations, corporations, cooperatives, legal representatives, trustees,
70 trustees in bankruptcy, receivers or group of persons and includes King County.

71 J. "Respondent" means a person who has been alleged or found to have
72 committed an unfair contracting practice prohibited by this chapter.

73 K. "Sexual orientation" means male or female heterosexuality, bisexuality or
74 homosexuality, and includes a person's attitudes, preferences, beliefs and practices
75 pertaining to sex.

76 L. "Trade association" means an association of businesses organizations engaged
77 in similar fields of business that is formed for mutual protection, the interchange of ideas,
78 information and statistics or the maintenance of standards within their industry.

79 NEW SECTION. SECTION 3. **Unfair contracting practices prohibited.**

80 It is an unfair contracting practice for a:

81 A. King County government agency, business enterprise doing business in
82 unincorporated King County or business enterprise required to comply with this chapter
83 by the terms of an agreement with King County under section 11 of this ordinance to
84 discriminate against a person with respect to the bid, award or referral of a contract or
85 with respect to the conditions, terms, price, performance standards or other provisions of
86 a contract;

87 B. Contracting agency or trade association to discriminate against a person with
88 respect to membership rights and privileges, admission to or participation in a guidance
89 program or other business or occupational training program;

90 C. Bonding company to discriminate against a person regarding the terms and
91 conditions under which bonding services are offered or performed;

92 D. Contracting agency or trade association to discriminate against a person with
93 respect to a referral of a contract opportunity or assignment of a particular contract;

94 E. Contractor, business enterprise, contracting agency or trade association to
95 retaliate against a person because that person has opposed an act of discrimination or
96 because that person has made a charge, testified or assisted in any manner in an
97 investigation, proceeding or hearing initiated under this chapter.

98 **NEW SECTION. SECTION 4. Filing of complaint.**

99 A. An individual complaint alleging an unfair contracting practice in connection
100 with a commercially significant contract may be filed by or on behalf of any person who
101 claims to be aggrieved by that unfair contracting practice with the office of civil rights
102 enforcement.

103 B. A complaint alleging that a group is being subjected to an unfair contracting
104 practice in connection with a commercially significant contract may be filed by:

- 105 1. any member of the group;
- 106 2. the office of civil rights enforcement;
- 107 3. a state or federal agency concerned with discrimination in contracting

108 whenever the agency has reason to believe that an unfair contracting practice has been or
109 is being committed;

110 4. a trade association that has reason to believe that an unfair contracting
111 practice has been or is being committed against any of its members.

112 C. A complaint alleging an unfair contracting practice shall be in writing on a
113 form or in a format determined by the office of civil rights enforcement, shall be signed
114 by the charging party, shall describe with particularity the unfair contracting practice
115 complained of and shall include a statement of the dates, places and circumstances and
116 the persons responsible for the acts and practices. The complaint must be filed within
117 one hundred eighty days of the time of the alleged unfair contracting practice or within
118 one hundred eighty days of when the charging party, through exercise of due diligence,
119 should have had notice or been aware of the occurrence. However, a complaint shall not
120 be rejected as insufficient because of failure to include all required information, if it
121 substantially meets the informational requirements necessary for processing.

122 D. If a complaint has been filed in accordance with this chapter, the office of civil
123 rights enforcement shall initiate an investigation under this chapter. If the office of civil
124 rights enforcement determines that a violation of this chapter or a rule or regulation
125 adopted under this chapter has occurred, the office shall issue an order in accordance with
126 this chapter. With respect to violations of this chapter, the notice, service and hearings
127 provisions in this chapter control over K.C.C. Title 23.

128 E. The charging party or the office of civil rights enforcement may amend a
129 charge: to cure technical defects or omissions; or to clarify and amplify allegations made
130 in the charge; or to add allegations related to or arising out of the subject matter set forth,
131 or attempted to be set forth, in the original charge. For jurisdictional purposes, the
132 amendments shall relate back to the date the original charge was first filed. The charging

133 party may also amend a charge to include allegations of additional unrelated
134 discriminatory acts or retaliation, or both, that arose after filing of the original charge.
135 The amendment must be filed within one hundred eighty days after the occurrence of the
136 additional discriminatory act or retaliation, or both, and before the issuance of findings of
137 fact and a determination with respect to the original charge by the office of civil rights
138 enforcement. The amendments may be made at any time during the investigation of the
139 original charge if the office of civil rights enforcement will have adequate time to
140 investigate the additional allegations and the parties will have adequate time to present
141 the office of civil rights enforcement with evidence concerning the allegations before the
142 issuance of findings of fact and a determination.

143 F. Upon the receipt of a complaint, the office of civil rights enforcement shall
144 serve notice upon the charging party acknowledging the filing.

145 NEW SECTION. SECTION 5. Complaint - investigation.

146 A. Upon receipt of a complaint meeting the requirements of section 4 of this
147 ordinance, the office of civil rights enforcement shall, within twenty days, cause to be
148 served or mailed to the respondent by certified mail, return receipt requested, a copy of
149 the complaint along with a notice advising of procedural rights and obligations of
150 respondents under this ordinance, and shall promptly make an investigation thereof.
151 Each respondent may file an answer to the complaint, not later than twenty days after
152 receipt of notice from the office of civil rights enforcement. If the respondent is unable
153 to file a response within twenty days, the respondent may request an extension of time
154 from the office of civil rights enforcement. The extension may be granted if good cause
155 is shown.

156 B. The investigation shall be commenced promptly. It shall be directed to
157 ascertain the facts concerning the discriminatory practice alleged in the complaint and
158 shall be conducted in an objective and impartial manner.

159 C. During the investigation, the office of civil rights enforcement shall consider
160 any statement of position or evidence with respect to the allegations of the complaint
161 which the charging party or the respondent wishes to submit. A person who is not named
162 as a respondent in a complaint, but who is identified as a respondent in the course of the
163 investigation, may be joined as an additional or substitute respondent upon written notice
164 to the person from the office of civil rights enforcement. The notice, in addition to
165 meeting the requirements of subsection A of this section, shall explain the basis for the
166 belief of the office of civil rights enforcement that the person to whom the notice is
167 addressed is properly joined as a respondent.

168 D. During the period beginning with the filing of the complaint and ending with
169 the issuance of the findings of fact, the office of civil rights enforcement shall, to the
170 extent feasible, engage in settlement discussions with respect to the complaint. Nothing
171 said or done in the course of the settlement discussions may be used as evidence in a
172 subsequent proceeding under this ordinance without the written consent of the persons
173 concerned. A prefinding settlement agreement arising out of the settlement discussions
174 shall be an agreement between the respondent and the charging party, and is subject to
175 approval by the office of civil rights enforcement. Failure to comply with the prefinding
176 settlement agreement may be enforced under section 8 of this ordinance.

177 E. The office of civil rights enforcement shall seek the voluntary cooperation of
178 all persons: to obtain access to premises, records, documents, individuals and other

179 possible sources of information; to examine, record and copy necessary materials; and to
180 take and record testimony or statements of persons reasonably necessary for the
181 furtherance of the investigation. The office of civil rights enforcement may conduct
182 discovery in aid of the investigation by the following methods or others: deposition upon
183 oral examination or written questions; written interrogatories; requests for the production
184 of documents or evidence; inspection and physical and mental examinations; and requests
185 for admissions. The office of civil rights enforcement may sign and issue subpoenas
186 requiring the attendance and testimony of witnesses, the production of evidence including
187 but not limited to books, records, correspondence or documents in the possession or
188 under the control of the person subpoenaed, access to evidence for the purpose of
189 examination and copying as are necessary for the investigation. The office of civil rights
190 enforcement shall consult with the prosecuting attorney before issuing any subpoena
191 under this section.

192 F. If an individual fails to obey a subpoena, or obeys a subpoena but refuses to
193 testify when requested concerning any matter under investigation, the office of civil
194 rights enforcement may invoke the aid of the King County prosecuting attorney who may
195 petition the King County superior court for an order or other appropriate action necessary
196 to secure enforcement of the subpoena. The petition shall be accompanied by a copy of
197 the subpoena and proof of service, shall set forth in what specific manner the subpoena
198 has not been complied with and shall ask an order of the court to compel the witness to
199 appear and testify or cooperate in the investigation of the unfair contracting practice.

200 G. If the office of civil rights enforcement concludes after the filing of a
201 complaint that prompt judicial action is necessary to carry out the purposes of this

202 chapter, the office of civil rights enforcement may invoke the aid of the prosecuting
203 attorney who may file a civil action for appropriate temporary, injunctive or preliminary
204 relief pending final disposition of the complaint.

205 H. The results of the investigation shall be reduced to written findings of fact and
206 a finding shall be made that there either is or is not reasonable cause for believing that an
207 unfair contracting practice has been or is being committed.

208 I. If a finding is made that there is no reasonable cause, the finding shall be
209 served on the charging party and respondent. Within thirty days after service of the
210 negative finding, the charging party may file a written request with the office of civil
211 rights enforcement asking for reconsideration of the finding. The office of civil rights
212 enforcement shall respond in writing within a reasonable time by granting or denying the
213 request.

214 NEW SECTION. SECTION 6. Settlement.

215 A. If the finding is made initially or on request for reconsideration that
216 reasonable cause exists to believe that an unfair contracting practice has occurred, the
217 office of civil rights enforcement shall endeavor to eliminate the unfair practice by
218 conference, conciliation and persuasion, which may include as a condition of settlement
219 the elimination of the unfair contracting practice, actual damages including payment of
220 lost profits not in excess of the amount of monetary damage actually incurred and
221 damages caused by humiliation and embarrassment, attorneys' fees or such other
222 requirements as may be agreed upon by the parties and the office of civil rights
223 enforcement. A settlement agreement shall be reduced to writing and signed by the
224 respondent and the charging party and shall be approved by the office of civil rights

225 enforcement. An order shall then be entered by the office of civil rights enforcement
226 setting forth the terms of the agreement. Copies of the order shall be delivered to all
227 affected parties and the original of the order filed with the division of records and
228 elections. Failure to comply with the postfinding settlement agreement or order may be
229 enforced under section 8 of this ordinance. Each postfinding settlement agreement is a
230 public record.

231 B. If an agreement cannot be reached, a finding to that effect shall be made by
232 the office of civil rights enforcement and incorporated in the order, with the copy thereof
233 furnished to the complainant and the respondent. The order shall also include:

- 234 a. a finding that an unfair contracting practice has occurred;
- 235 b. the basis for the finding;
- 236 c. an order requiring the respondent to cease and desist from the unfair practice
237 and to take appropriate affirmative measures, including but not limited to, actual damages
238 including payment of lost profits not in excess of the amount of monetary damages
239 actually incurred and damages caused by humiliation and embarrassment, payment of
240 attorneys' fees or to take such other action as in the judgment of the office of civil rights
241 enforcement will effectuate the purposes of this chapter, which may include the
242 requirement for a report on the matter of compliance. If the office of civil rights
243 enforcement finds the respondent willfully or knowingly committed any unfair
244 contracting practice, the office of civil rights enforcement may further order the
245 respondent to pay a civil penalty of up to one thousand dollars per violation, which
246 penalty shall be paid to the King County treasury division for deposit in the county
247 general fund.

248 C. If there is a failure to reach an agreement for the elimination of any unfair
249 contracting practice where the respondent is an executive department, division or office
250 of the county, the office of civil rights enforcement may compel compliance by the
251 executive department, division or office with any settlement agreement agreed to between
252 the complainant and the office of civil rights enforcement.

253 **SECTION 7. Hearing - appeal.**

254 A. A party aggrieved by an order of the office of civil rights enforcement may
255 request in writing within ten days of the service of the notice and order an appeal hearing
256 before the county office of the hearing examiner. The request shall cite the notice and
257 order appealed from and contain a brief statement of the reasons for seeking the appeal
258 hearing.

259 B. An order issued by the office of civil rights enforcement in accordance with
260 procedures contained in this chapter becomes final ten days after service of the notice and
261 the order unless a written request for hearing is received by the hearing examiner within
262 the ten day period.

263 C. If the order of the office of civil rights enforcement is appealed, the office of
264 the hearing examiner shall conduct a hearing for the purpose of affirming, denying or
265 modifying the order. There shall be a verbatim record kept of the hearing and the hearing
266 examiner shall have such rule-making and other power necessary for the conduct of the
267 hearing as are specified by K.C.C. 20.24.170. The order of the office of civil rights
268 enforcement shall not be accorded the presumption of correctness. The hearing
269 examiner's decision shall be based upon a preponderance of the evidence. The hearing
270 shall be conducted within a reasonable time after receipt of the request for appeal.

271 Written notice of the time and place of the hearing shall be given at least ten days before
272 the date of the hearing to each affected party and to the office of civil rights enforcement.

273 D. Each party has the following rights, among others:

274 1. to call and examine witnesses on any matter relevant to the issues of the
275 complaint;

276 2. to introduce documentary and physical evidence;

277 3. to cross-examine opposing witnesses on any matter relevant to the issues of
278 the complaint;

279 4. to impeach any witness regardless of which party first called the witness to
280 testify;

281 5. to rebut evidence against the party;

282 6. to represent himself or herself or to be represented by anyone of the party's
283 choice who is lawfully permitted to do so.

284 E. Following review of the evidence submitted, the hearing examiner presiding at
285 the hearing shall enter written findings and conclusions and shall affirm or modify the
286 order previously issued if the examiner finds that a violation has occurred. The examiner
287 shall reverse the order if the examiner finds no violation occurred. A copy of the
288 examiner's decision shall be delivered to all affected parties.

289 NEW SECTION. SECTION 8. Enforcement.

290 A. If the respondent refuses or fails to comply with an order of the office of civil
291 rights enforcement that has not been appealed under section 7 of this ordinance, the office
292 of civil rights enforcement may enforce the order against the person utilizing civil
293 penalties of K.C.C. Title 23. If a civil penalty is assessed, notwithstanding the monetary

294 amount provided in K.C.C. Title 23, the penalty shall be two hundred dollars per day for
295 each day the respondent refuses or fails to comply with an order of the office of civil
296 rights enforcement.

297 B. If the office of civil rights enforcement has reasonable cause to believe that a
298 respondent has breached a prefinding or postfinding settlement agreement or has violated
299 an order of the office of civil rights enforcement issued under section 6 of this ordinance,
300 the office of civil rights enforcement shall refer the matter to the prosecuting attorney for
301 the filing of a civil action under subsection C of this section for the enforcement of the
302 agreement.

303 C. The prosecuting attorney may commence a civil action in King County
304 superior court for appropriate relief with respect to a breach of a prefinding or postfinding
305 settlement agreement or violation of an order of the office of civil rights enforcement
306 issued under section 6 of this ordinance or an order of the hearing examiner issued under
307 section 7 of this ordinance.

308 **NEW SECTION. SECTION 9. Enforcement by private parties.**

309 A. An aggrieved person may commence a civil action in King County superior
310 court not later than one year after the occurrence or the termination of an alleged unfair
311 contracting practice, whichever occurs last, to obtain appropriate relief with respect to the
312 unfair contracting practice.

313 B. The computation of the one-year period does not include time during which an
314 administrative proceeding under this chapter was pending with respect to a complaint or
315 charge under this chapter based upon the discriminatory contracting practices.

316 C. An aggrieved person may commence a civil action under this section whether

317 or not a complaint has been filed under section 4 of this ordinance and without regard to
318 the status of any such a complaint, except as provided in subsection D of this section, but
319 if a settlement or conciliation agreement has been reached with the consent of an
320 aggrieved person, an action may not be filed under this subsection by the aggrieved
321 person with respect to the alleged unfair contracting practice that forms the basis for the
322 complaint except for the purpose of enforcing the terms of the agreement.

323 D. An aggrieved person may not commence a civil action under this section with
324 respect to an alleged unfair contracting practice which forms the basis of a complaint if a
325 hearing on the complaint has been convened by the office of the King County hearing
326 examiner.

327 E. In a civil action under this section, if the court finds that an unfair contracting
328 practice has occurred or is about to occur, the court may grant as relief, as the court
329 deems appropriate, any permanent or temporary injunction, temporary restraining order,
330 or other order, including an order enjoining the defendant from engaging in such a
331 practice or ordering such affirmative measures as might be appropriate. The court may
332 also allow reasonable attorneys' fees and costs to the prevailing party.

333 F. Relief granted under this section does not affect any contract, sale,
334 encumbrance or lease consummated before the granting of the relief and involving a bona
335 fide purchaser, encumbrances or tenant, without actual notice of the filing of a complaint
336 with the office of civil rights enforcement or civil action under this title.

337 G. Upon timely application, the prosecuting attorney may intervene in the civil
338 action if the prosecuting attorney certifies that the case is of general public importance.

339 NEW SECTION. SECTION 10. Authorization to implement procedures.

340 The office of civil rights enforcement: shall receive, investigate and issue findings and
341 orders with respect to charges alleging unfair practices as defined by this chapter,
342 conciliate and settle the charges by agreement and monitor and enforce any agreement or
343 order resulting therefrom or from a subsequent hearing on the charges under this chapter;
344 and has such powers and duties in the performance of these functions as are defined in
345 this chapter and otherwise necessary and proper in the performance of the powers and
346 duties and provided by law. The office of civil rights enforcement may implement such
347 forms, administrative processes and operational procedures as are necessary to implement
348 this chapter, but the forms, processes and procedures shall be adopted in compliance with
349 K.C.C. chapter 2.98. The office of civil rights enforcement shall further assist other
350 county agencies and departments upon request in effectuating and promoting the
351 purposes of this chapter.

352 NEW SECTION. SECTION 11. Requirement to comply.

353 King County shall include the requirement to comply with this chapter in all contracts, all
354 agreements with recipients of grants and other funds through or from King County and all
355 agreements with organizations which use King County buildings, facilities or property or
356 use property for which King County is responsible for capital improvements.

357 SECTION 12. Sections 2 through 11 of this ordinance should constitute a new
358 chapter in the King County Code.

359 SECTION 13. Severability. If any provision of this ordinance or its application
360 to any person or circumstance is held invalid, the remainder of the ordinance or the

361 application of the provision to other persons or circumstances is not affected.

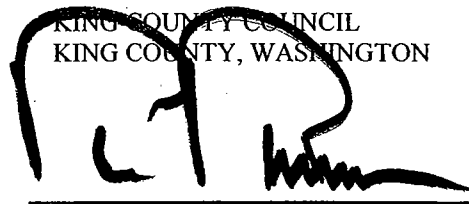
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Ordinance 13981 was introduced on 11/15/99 and passed by the Metropolitan King County Council on 10/30/00, by the following vote:

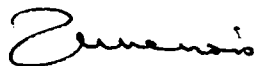
Yes: 13 - Mr. von Reichbauer, Ms. Miller, Ms. Fimia, Mr. Phillips, Mr. Pelz, Mr. McKenna, Ms. Sullivan, Mr. Nickels, Mr. Pullen, Mr. Gossett, Ms. Hague, Mr. Vance and Mr. Irons
No: 0
Excused: 0

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON



Pete von Reichbauer, Chair

ATTEST:



Anne Noris, Clerk of the Council

APPROVED this 8 day of NOVEMBER 2000.



Ron Sims, County Executive

Attachments None

