

(O-91-138 REV. 2)
ORDINANCE NUMBER O-17614 (NEW SERIES)
ADOPTED ON MARCH 18, 1991

AN ORDINANCE AMENDING CHAPTER II, ARTICLE 6, OF THE SAN DIEGO MUNICIPAL CODE BY ADDING DIVISION 9, AND BY ADDING SECTIONS 26.0901, 26.0902, 26.0903, 26.0904, 26.0905, 26.0906, 26.0907, 26.0908, 26.0909, 26.0910 AND 26.0911, RELATING TO A HUMAN RELATIONS COMMISSION.

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter II, Article 6, of the San Diego Municipal Code be and the same is hereby amended by adding Division 9, Entitled "Human Relations Commission" and adding Sections 26.0901, 26.0902, 26.0903, 26.0904, 26.0905, 26.0906, 26.0907, 26.0908, 26.0909, 26.0910 and 26.0911, to read as follows:

DIVISION 9

HUMAN RELATIONS COMMISSION OF THE CITY OF SAN DIEGO
SEC. 26.0901 FINDINGS.

The population of the City of San Diego is composed of people of various racial, religious and ethnic groups. In this City, the practice of discrimination on the grounds of race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition, or place of birth, and the exploitation of prejudice related thereto adversely affects members of the above groups.

Such discriminatory practices are inimical to the public welfare and good order in that they: (1) impede social and economic progress for the entire citizenry by preventing members of the above groups from achieving full development of their individual potentialities and from contributing fully to the cultural and business life of the community; (2) constantly frustrate, degrade and embitter members of the above groups, thereby diminishing their initiative and interest in the community; and (3) tend to create intergroup hostilities and anti-social behavior.

The products of discrimination accumulate continuously, with the result that the social, economic and educational gaps between those suffering discrimination and the rest of the community constantly widen. As a result, mere prohibition of present and future discrimination, while essential, will not reduce the inequalities and disadvantages which a history of discrimination has produced. Accordingly, remedial action

must be initiated, encouraged, and coordinated, particularly educational programs to bring groups together to close gaps.

Experiences of other urban centers throughout the nation have proven the need for and the effectiveness of commissions empowered to study community, race and human relations problems, to work with interested citizens to develop programs to ameliorate tensions and reduce cultural, social, and economic disadvantages and to encourage and coordinate implementation of such programs consistent with the needs and rights of members of all groups in the community.

SEC. 26.0902 PURPOSE AND INTENT.

It is the purpose and intent of this Division to create a Human Relations Commission for The City of San Diego which shall consult with and advise the Mayor, City Council, and City Manager on the rights of every inhabitant of The City of San Diego to equal economic, political and educational opportunity, to equal accommodations in all business establishments in the City and to equal service and protection by public agencies. The Commission shall give effect to such rights to eliminate prejudice and discrimination because of race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition or place of birth and shall advise the Mayor, City Council and the City Manager on methods to inform the inhabitants of The City of San Diego of developments in human relations. The Commission shall also provide expert advice and assistance to the Mayor, City Council and City Manager in order that all officers, agencies, boards, departments and employees of The City of San Diego may take ameliorative steps to enhance peace and good order, and provide equal opportunity for and good will toward all people. Further, the Commission may recommend use of mediation and/or conciliation processes to attempt to eliminate alleged unfair or unlawful discriminatory practices as defined herein.

SEC. 26.0903 SCOPE.

(a) This Division applies to all discriminatory practices and to resulting intergroup tensions specifically covered by the provisions of this Division occurring within the territorial limits of The City of San Diego or within any governmental agency or any other agency under the jurisdiction of The City of San Diego and, to the extent permitted by law, to activities outside the City which reasonably affect such practices and tensions within said territorial limits. Nothing in this Division, however, shall be interpreted or applied so as to create any power or duty in conflict with the preemptive effect of any federal or state law. Nor shall anything in this Division be implemented in a way that overlaps already existing federal or state programs; rather, federal or state programs shall be utilized, or supplemented when necessary, appropriate, and feasible, to give effect to this Division.

SEC. 26.0904 DEFINITIONS.

As used in this Division:

(a) "Commission" is the Human Relations Commission.

(b) "Conciliation" is a voluntary process in which a neutral third party serves as an intermediary between the conflicting parties. The parties may or may not meet directly.

(c) "Discrimination" is the unlawful treatment of or distinction against a person based on the group class or category to which that person belongs rather than on individual merit. Those classes or groups protected by this Division are those defined in federal or state law and San Diego Municipal Code section 52.9601 et seq.

(d) "Mediation" is a voluntary dispute resolution process in which the parties in conflict meet with a neutral third party in an attempt to resolve the conflict or dispute in a manner that is satisfactory to the parties in conflict.

(e) "Reasonable cause" is a threshold standard for the Commission to initiate a conciliation or mediation process. The standard is met when the investigation of the alleged unfair or unlawful practice produces sufficient credible evidence that would cause a reasonable person of ordinary care and prudence to conclude that the unfair or unlawful practice occurred.

(f) "Unfair" shall mean not fair or conforming to fundamental notions of justice, honesty, ethics or the like.

(g) "Unlawful practice" shall mean any policy or practice which constitutes illegal discrimination as defined in federal, state or local laws.

SEC. 26.0905 HUMAN RELATIONS COMMISSION ESTABLISHED.

(a) There is hereby created a Human Relations Commission consisting of fifteen (15) members who shall serve without compensation. All members of the Commission shall be residents of the City of San Diego unless otherwise waived by the Council pursuant to Council Policy 000-13. All prospective members shall have demonstrated an expertise in human relations work and a commitment to fostering better human relations in The City of San Diego.

(b) The Commissioners shall be appointed by the Mayor and confirmed by City Council, subject to the following procedure.

(1) The Mayor shall appoint seven (7) members;

(2) The Mayor shall appoint the remaining eight (8) members, one each from a list of up to three (3) nominations submitted by each Councilmember.

(c) Of the initial fifteen (15) Commissioners appointed, eight (8) shall serve a term of four (4) years and seven (7) shall serve a term of two (2) years. Thereafter, members shall be appointed for a term of office of four (4) years, except that all vacancies occurring during a term shall be filled for the remainder of the unexpired term.

(d) Commissioners may serve a maximum of two (2) full four (4) year terms, for a maximum of eight (8) consecutive years, with a four (4)

year interval between terms in accordance with Section 43 of the City Charter.

(e) The Commissioners shall elect a chair from among their members. The Chair shall serve at the pleasure of the members but for no longer than two (2) years.

(f) The Commissioners may be removed for cause by a vote of a majority of the members of the City Council.

(g) The position of Executive Director of the Commission is hereby established and shall be appointed by the City Manager. The Director shall be a management assistant to the City Manager. The City Manager may seek counsel and advice from the Commission's Chair about matters within the jurisdiction of the Commission.

(h) Subject to its unfettered legislative discretion, the Council will use good faith efforts to ensure that:

1. Sufficient funds for an Executive Director and necessary staff are provided to assist the Commission in carrying out its duties and responsibilities; and

2. The Commission reflects the cultural diversity of the community including ethnicity, gender, age, sexual orientation and disability.

SEC. 26.0906 POWERS AND DUTIES.

The Commission shall:

(a) Conduct programs designed to bring groups together to close gaps resulting from past discriminatory practices and to address proactively current or ongoing intergroup tensions.

(b) Mediate disagreements among individuals, groups and organizations which result from discriminatory practices within the scope of this Division.

(c) Process complaints which cannot be resolved through mediation as provided in the procedures which follow in Section 26.0908(e).

(d) Adopt, by two-thirds vote of its members, by-laws governing the conduct of its meetings and activities, the establishment of subcommittees, and such other rules as may be necessary for the performance of its functions; provided, that such by-laws shall specify that a quorum shall at all times consist of a majority of its authorized membership and that any amendments to the by-laws shall require an affirmative vote of two-thirds of its authorized membership.

(e) Render a written report of its activities to the Mayor and Council not less than once every six (6) months. Such report shall include:

1. Case histories of conciliation or mediation settlements made under this Division, the disclosure of which, in the judgment of the Commission, will further the objectives of this Division but such reports of case histories shall not include names or other facts which might

clearly identify the parties involved without the prior written consent of the parties first obtained.

2. Recommendations to the Mayor and Council for development of policies and procedures which will further the objectives of this Division.

3. Recommendations to the Mayor and Council of additional legislation deemed by the Commission to be necessary to carry out the purposes of this Division.

4. Instances of discrimination by any City agency, board or officer which the Commission determines to have occurred subsequent to the issuance of its prior report.

5. Recommendations of actions to be taken by the City Council, City Manager or independent Department Director for the purposes of furthering the objectives of this Division.

(f) Maintain records and serve as the source of accurate and reliable data on practices, activities, and other problems which are the subject of this division.

(g) Meet not less than once a month.

(h) In addition to the other powers and duties set forth in this Division, the Commission shall have the power and duty to:

(1) Prepare and disseminate educational and informational material relating to prejudice and discrimination and recommended ways and means of eliminating such prejudice and discrimination.

(2) Furnish cooperation, information, guidance and technical assistance to other public agencies and private persons, organizations and institutions engaged in activities and programs intended to eliminate prejudice and discrimination.

(3) Consult and maintain contact with other public agencies and representatives of employers, labor unions, property owners associations, professional associations, national origin groups, community organizations concerned with interracial, interreligious and intercultural understanding, social welfare organizations, and such other private organizations and institutions as the Commission shall deem advisable to further objectives of this Division.

(4) Advise and make written recommendations to the Mayor, City Council, City Manager, independent Department Directors and independent City Corporations concerning the development and implementation of programs and practices for the purpose of furthering the objectives of this Division. If necessary, the Commission and an agency, board, or officer which the Commission is assisting shall submit timely reports of progress in establishing and implementing such programs and practices as are from time to time requested by the Mayor or Council through the Executive Director of the Commission. The Commission shall not have jurisdiction over matters within the authority of the Civil Service Commission or the Citizens Equal Opportunity Commission

including, but not limited to, City employee discrimination complaints or minority contracting practices; provided, however, that on a case by case basis and subject to specific direction from the City Council as expressed by a duly adopted formal resolution of the Council and as may be otherwise permitted by law, the Commission may be designated to make investigations of allegations of unfair or unlawful practices arising out of the proceedings of the Civil Service Commission to the extent that such investigations are consistent with Section 128 of the City Charter.

(5) Investigate, and with the assent of the concerned parties, conciliate or mediate all incidents of discrimination within the scope of this Division to the extent such functions are not within the responsibilities of the California Fair Employment Practices Commission or any federal, county, state, City or other established agency, and make specific and detailed recommendations to the interested parties as to the method of eliminating such discrimination.

(6) Prepare, encourage and coordinate programs based on established laws, regulations, policies, or goals to eliminate or reduce existing inequalities and disadvantages in the community resulting from past discriminatory practices.

(7) Hold public hearings on community-wide problems which may result in discrimination because of race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition or place of birth.

(8) Refer for appropriate legal action any matters not resolved through conciliation or mediation to the appropriate prosecutorial or regulatory entity pursuant to Section 26.0908.

(9) Request through the City Manager or independent department directors information, services, facilities or any other assistance for the purpose of furthering the objectives of this Division.

(10) Appoint subcommittees as may be required to address specific human relations problems. Such subcommittees will be composed of persons who are members of the Commission.

(11) Support and participate in activities which bring together various factions and viewpoints on emerging issues in a way that will help the community to resolve the issues which arise with change.

SEC. 26.0907 COOPERATION WITH OTHER COMMUNITIES AND AGENCIES.

The Commission shall consult with and maintain contact with human relations agencies, both public and private and shall cooperate in the development and implementation of inter- and intra-community relations programs to further the objectives of this Division.

SEC. 26.0908 COMPLAINT RESOLUTION PROCESS.

(a) Upon the filing with the Commission of a complaint by any individual or entity that an unfair or unlawful practice of

discrimination as defined in Section 26.0904 of this Division has occurred, the Executive Director, following consultation with the Commission Chair, shall undertake an investigation of the complaint. If, upon such investigation, it is found that the individual or entity charged in the complaint has not or is not engaged in any unfair or unlawful practice, such finding shall be set forth in writing and shall be filed with the Commission and the complaint shall be dismissed. It shall be the responsibility of the Commission to notify, in writing, all parties to the complaint of such dismissal. If, upon such investigation, it is found that reasonable cause exists for the allegations made in the complaint, the Chair of the Commission, pursuant to regulations duly adopted by the Commission, shall designate one or more of the Commissioners to endeavor to eliminate the alleged unfair or unlawful practice charged in the complaint by means of conciliation or mediation. In furtherance of such conciliation and mediation, the Commission may make specific recommendations to the parties, but such recommendations shall not constitute a decision, finding of fact, judgment or order of the Commission, nor be binding upon or admissible in any court in any subsequent proceedings brought under subsection (e) of this section to the extent allowed by law.

(b) In cases where a settlement is reached, all evidence and information given to or obtained by the Commission in any proceedings under the provisions of subsection (a) of this section will be kept in confidence, to the extent allowed by law.

(c) A party to this process retains all legal or constitutional privileges and defenses, to the extent allowed by law.

(d) If the party committing an alleged unfair or unlawful practice complies with the recommendations of the Commission, the matter shall be deemed settled and terminated and no other proceedings shall be had or taken by the Commission.

(e) If the Commission is unable to resolve an alleged unfair or unlawful practice, it may refer the aggrieved person or matter in dispute to the City Attorney or other appropriate prosecutorial or regulatory entity for appropriate legal action to resolve such alleged unfair or unlawful practice. The Commission shall, at the time of referring said matter, transmit to the City Attorney or other appropriate prosecutorial or regulatory entity a copy of its findings and recommendations in the case. The City Attorney or other appropriate prosecutorial or regulatory entity, in its discretion, may proceed to secure from an appropriate court an order enjoining the defendant(s) from continuing or repeating such practice. If the Commission, prior to commencement of the court proceedings, as a result of its effort finds that the alleged violator no longer engages in the alleged unlawful practice described in the findings and complies with the recommendations of the Commission, no such proceedings shall be instituted.

SEC. 26.0909 INDIVIDUAL REMEDIES.

Nothing in this Division or the provisions thereof shall be construed as granting or denying to an aggrieved individual or entity any additional right to pursue a civil action against any person, firm, partnership, association, corporation or any agency, board or officer of the City, or any action allowed under state or federal law.

SEC. 26.0910 MEETINGS.

(a) All meetings of the Commission shall be public consistent with the Ralph M. Brown Act.

(b) A Commissioner who misses three (3) consecutive meetings or one-third of all the regular scheduled meetings within the City's fiscal year shall be automatically removed from the Commission.

(c) A quorum shall consist of a majority of the authorized membership of the Commission.

(d) When there are twelve (12) or fewer Commission members in attendance, but at least a quorum, seven (7) votes shall be required for official action. When thirteen (13) or more members are in attendance, action may be taken by a simple majority.

SEC. 26.0911 SEVERABILITY.

If any part or provision of this Division or the application thereof to any person or circumstance is held invalid, the remainder of this Division, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Division are severable.

Section 2. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By

Lorraine L. Etherington

Deputy City Attorney

LLE:mrh

02/22/91

02/28/91 REV. 1

03/20/91 REV. 2

Or.Dept:Mayor

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