

ORDINANCE NUMBER O- 20244 (NEW SERIES)

DATE OF FINAL PASSAGE MAR 27 2013

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 6, DIVISION 9 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 26.0901, 26.0902, 26.0904, 26.0905, 26.0906, 26.0907, 26.0908, 26.0909, AND 26.0910, RELATING TO THE HUMAN RELATIONS COMMISSION.

WHEREAS, the Human Relations Commission (Commission) is established to consult with and advise the Mayor and the City Council 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; and

WHEREAS, the Commission is tasked with receiving complaints and recommending the use of mediation or conciliation processes to attempt to eliminate alleged prejudice and discrimination; and

WHEREAS, the Municipal Code currently lists protected characteristics that are the grounds of discrimination such as race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition, and place of birth; and

WHEREAS, the City seeks to add to the list additional characteristics such as national origin, citizenship, marital status, military service, or any other characteristic protected by applicable federal, state, or local laws, in order to correspond with current laws; and

WHEREAS, the Municipal Code currently provides that the Commission shall consist of fifteen members appointed by the Mayor and confirmed by the City Council as follows: seven members appointed directly by the Mayor and eight members, one each from a list of up to three nominations submitted by each Councilmember; and

WHEREAS, the City seeks to increase the total number of Commissioners to seventeen by increasing from seven to eight the number of appointments made directly by the Mayor and by increasing from eight to nine the number of appointments made from the list of up to three nominations submitted by each Councilmember because the Council is expanding from eight to nine members in order to maintain a total odd number of Commissioners for vote counts; and

WHEREAS, the Municipal Code currently provides that of the initial fifteen Commissioners appointed, eight shall serve a term of four years, seven shall serve a term of two years, and thereafter, members shall be appointed for a term of four years; and

WHEREAS, the City seeks to replace the initial appointment timeframes that are outdated while maintaining the staggered terms of office for the Commissioners such that all members shall be appointed for a term of office of four years with eight terms ending in even years and nine terms ending in odd years; and

WHEREAS, the Municipal Code currently provides that the Chair of the Commission shall serve at the pleasure of the members but for no longer that two years; and

WHEREAS, the City seeks to increase the Chair's term limit from two years to three years for consistency, stability, and institutional knowledge; and

WHEREAS, the Municipal Code currently provides that one of the duties of the Commission is to render a written report to the Mayor and the City Council annually; and

WHEREAS, the City seeks to consolidate and clarify the substance of the reports and to incorporate existing practices that have been in use for some time; and

WHEREAS, the Municipal Code currently provides that a Commissioner who misses three consecutive meetings or one-third of all of the regular scheduled meetings within the fiscal year shall be automatically removed from the Commission; and

WHEREAS, the City seeks to add “without excuse” to describe the missed meetings because the City seeks to accommodate the lives and other commitments of the volunteer Commissioners; and

WHEREAS, the City also seeks to address the language and grammatical inconsistencies within the Municipal Code sections pertaining to the Commission; NOW, THEREFORE,

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

Section 1. That Chapter 2, Article 6, Division 9 of the San Diego Municipal Code is amended by amending sections 26.0901, 26.0902, 26.0904, 26.0905, 26.0906, 26.0907, 26.0908, 26.0909, and 26.0910 to read as follows:

Article 6: Board and Commissions

Division 9: Human Relations Commission

§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, national origin or ancestry, age, gender, sexual orientation, disability, medical condition, place of birth, citizenship, marital status, military service, or any other characteristic protected by applicable federal, state, or local laws, 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.

§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, national origin or ancestry, age, gender, sexual orientation, disability,

medical condition, place of birth, citizenship, marital status, military service, or any other characteristic protected by applicable federal, state, or local laws, and shall advise the Mayor, City Council, and 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 the 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.

§26.0904 Definitions

As used in this Division:

- (a) through (e) [No change in text.]
- (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.

§26.0905 Human Relations Commission Established

- (a) There is hereby created a Human Relations Commission consisting of seventeen 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 the City Council, subject to the following procedure:
 - (1) The Mayor shall appoint eight members;
 - (2) The Mayor shall appoint the remaining nine members, one each from a list of up to three nominations submitted by each Councilmember.
- (c) Commissioners shall be appointed for a term of office of four years. The seventeen Commissioners will serve staggered terms with eight terms ending in even years and nine terms ending in odd years. All vacancies occurring during a term shall be filled for the remainder of the unexpired term.
- (d) Commissioners may serve a maximum of two full four year terms, for a maximum of eight consecutive years, with a four year interval before reappointment 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 three 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 Executive Director shall be a management assistant to the City Manager. The City

Manager may seek counsel and advice from the Executive Director and 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 communities of the City of San Diego.

§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 proactively address 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 using the procedures in Section 26.0908(e) or make additional, appropriate referrals.
- (d) Adopt, by two-thirds vote of its members, bylaws 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 bylaws shall specify that a quorum shall at all times

consist of a majority of its authorized membership and that any amendments to the bylaws shall require an affirmative vote of two-thirds of its authorized membership.

- (e) 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.
- (f) Render a written report of its activities to the Mayor and the City Council annually. Such report shall include summaries of recommendations to the Mayor and the City Council for development of policies and procedures, additional legislation deemed by the Commission to be necessary, presentations by citizens and organizations, and recommended actions to be taken by the Mayor, the City Council, or independent Department Directors, all of which will further the objectives of this Division.
- (g) 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 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 meetings on community-wide problems which may result in discrimination because of race, religion, color, national origin or ancestry, age, gender, sexual orientation, disability, medical condition, place of birth, citizenship, marital status, military service, or any other characteristic protected by applicable federal, state, or local laws.

- (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 Mayor, City Manager, or independent Department Directors information, services, facilities, or any other assistance for the purpose of furthering the objectives of this Division.

(10) through (11) [No change in text.]

§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, county, state, and federal relations programs to further the objectives of this Division.

§26.0908 Complaint Resolution Process

- (a) Upon any individual or entity filing a complaint with the Commission that an unfair or unlawful practice of discrimination, as defined in Section 26.0904, has occurred, the Executive Director, or his or her designee, 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 Executive Director or Commission Chair 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 at least two individuals, that may be one or more of the Commissioners, including the Chair, or other qualified individual trained in conciliation or mediation, 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 or 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 shall they be binding upon or admissible in any subsequent proceeding in any court unless 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) 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 with regard to that specific complaint.
- (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. 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 investigation, evidence, findings, and recommendations in the case. The City Attorney or other appropriate prosecutorial or regulatory entity, in its discretion, may prosecute or 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, the Commission may recommend to the City Attorney or other appropriate prosecutorial or regulatory entity that no such court proceedings be instituted.

§26.0909 Individual Remedies

Nothing in this Division 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.

§26.0910 Meetings

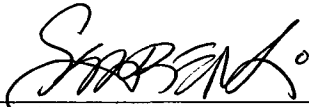
- (a) All meetings of the Commission shall be public and shall comply with the Ralph M. Brown Act.
- (b) The Commission shall meet not less than once a month.
- (c) A quorum shall consist of a majority of the authorized membership of the Commission.

- (d) When there are fourteen or fewer Commission members in attendance, but at least a quorum, eight votes shall be required for official action. When fifteen or more members are in attendance, action may be taken by a simple majority.
- (e) A Commissioner who misses, without excuse, three consecutive meetings or one-third of all of the regular scheduled meetings within the City's fiscal year shall be automatically removed from the Commission.

Section 2. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been made available to the City Council and the public prior to the day of its passage.

Section 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By  _____
Karen S. Li
Deputy City Attorney

KSL:hm
11/06/2012
Or.Dept:PSE
Doc. No. 439434

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of MAR 12 2013.

ELIZABETH S. MALAND
City Clerk

By Mary Zamora
Deputy City Clerk

Approved: 3/27/13
(date)

Bob Filner
BOB FILNER, Mayor

Vetoed: _____
(date)

BOB FILNER, Mayor