

I, Council Member Benson, move to amend proposed amendments to Title 7, Chapter 139.20 by adding, in alphabetical order, a definition of “business” and move to amend proposed amendments to 139.10(c) and 139.40(i), (l) and (m) to read as follows:

**139.10. Findings, declaration of policy and purpose, effective date.**

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(c) Effective date. The amendments to this chapter shall apply to any complaint or charge alleging conduct occurring on or after July 1, 2006. The ordinance as enacted prior to these amendments shall continue to apply to any complaint or charge alleging conduct occurring before July 1, 2006.

**139.20 Definitions.**

Business: Any partnership, association, corporation, legal representative, trustee, trustee in bankruptcy, or receiver. Business does not include the city and its departments, agencies, independent boards and commissions, the state and its departments and agencies, or other political subdivisions of the state.

**139.40. Acts of discrimination specified.** Without limitation, the following are declared to be unfair discriminatory acts:

\* \* \*

(i) *Discrimination in public accommodations.* For any person engaged in the provision of public accommodations, ~~because of race, color, creed, religion, ancestry, national origin, sex, affectional preference, disability, marital status, or status with regard to public assistance:~~

- (1) To fail or refuse to provide to any person access to the use of and benefit from the services, privileges, advantages, accommodations and facilities of such public accommodations because of race, color, creed, religion, ancestry, national origin, sex, sexual orientation, disability, marital status, or status with regard to public assistance.
- (2) To discriminate against any person with respect to the availability of such services and facilities, the price or other consideration therefor, the scope and quality thereof, or the terms and conditions under which the same are made available, including terms and conditions relating to credit, payment, warranties, delivery, installation and repair because of race, color, creed, religion, ancestry, national origin, sex, sexual orientation, disability, marital status, or status with regard to public assistance.
- (3) To provide services at different fee schedules between a person with a spouse and a person with registered domestic partner, or between a person with a spouse and children and a person with a registered

domestic partner and children because of race, color, creed, religion, ancestry, national origin, sex, sexual orientation, disability, marital status, or status with regard to public assistance.

- (4) To not make reasonable accommodation to the known physical, sensory, or mental disability of a person with a disability in a place of public accommodation. In determining whether an accommodation is reasonable, the factors to be considered may include:

  - a. the frequency and predictability with which members of the public will be served by the accommodation at that location.
  - b. the size of the business or organization at that location with respect to physical size, annual gross revenues, and the number of employees.
  - c. the extent to which persons with disabilities will be further served from the accommodation.
  - d. the type of operation.
  - e. the nature and amount of both direct costs and legitimate indirect costs of making the accommodation and the reasonableness for that location to finance the accommodation.
  - f. the extent to which any persons may be adversely affected by the accommodation.
- (5) To subject a person or class of persons on the basis of a disability of that person or class of persons, directly or through contractual, licensing, or other arrangements, to a denial of the opportunity of the person or class of persons to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity.
- (6) To afford a person or class of persons, on the basis of the disability of that individual or class of persons, directly or through contractual, licensing, or other arrangements, with the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations that are not equal to those afforded to other persons.
- (7) To provide a person or class of persons, on the basis of a disability of that person or class of persons, directly or through contractual, licensing, or other arrangements, with goods, services, facilities, privileges, advantages, or accommodations that are different or separate from those provided to other individuals, unless the action is necessary to provide the individual or class of individuals with goods, services, facilities, privileges,

advantages, or accommodations, or other opportunities that are as effective as those provided to others.

- (8) To not afford goods, services, facilities, privileges, advantages, and accommodations to a person with a disability in the most integrated setting appropriate to the needs of the person with a disability.
- (9) Notwithstanding the existence of separate or different programs or activities provided in accordance with subdivision 139.40(i)(5), to deny a person with a disability the opportunity to participate in the programs or activities that are not separate or different.
- (10) To, directly or through contractual or other arrangements, use standards or criteria and methods of administration that either:

  - a. Have the effect of discriminating on the basis of disability.
  - b. Perpetuate on the basis of disability the discrimination of others who are subject to common administrative control.
- (11) To impose or apply eligibility criteria that screen out or tend to screen out a person with a disability or any class of persons with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless the criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations.
- (12) To fail to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to afford the goods, services, facilities, privileges, advantages, or accommodations to persons with disabilities, unless the entity can demonstrate that making the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations.
- (13) To fail to take all necessary steps to ensure that no person with a disability is excluded, denied services, segregated, or otherwise treated differently than other persons because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking the steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered and would result in an undue burden;
- (14) To fail to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles used by an establishment for transporting individuals, not including barriers that can only be removed through the retrofitting of

vehicles by the installation of hydraulic or other lifts, if the removal is readily achievable.

(15) If an entity can demonstrate that the removal of a barrier under subdivision 139.40(i)(12) is not readily achievable or cannot be considered a reasonable accommodation, to fail to make the goods, services, facilities, privileges, advantages, or accommodations available through alternative means if the means are readily achievable.

(16) To deny any person with a disability the full and equal enjoyment of specified public transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce by any of the following:

a. The imposition or application of eligibility criteria that screen out, or tend to screen out, an individual with a disability or a class of individuals with disabilities from fully enjoying the specified public transportation services provided by the entity, unless the criteria can be shown to be necessary for the provision of the services being offered.

b. The failure to make reasonable modifications, provide auxiliary aids and services, and remove barriers, consistent with subdivision 139.40(i)(9) through 139.40(i)(13).

c. The purchase or lease of a new vehicle, other than an automobile or van with a seating capacity of fewer than eight passengers, including the driver, or an over-the-road bus, that is to be used to provide specified public transportation that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, except that a new vehicle need not be readily accessible to and usable by individuals with disabilities if the vehicle is to be used solely in a demand responsive system and if the private entity can demonstrate that the system, when viewed in its entirety, provides a level of services to individuals with disabilities equivalent to the level of service provided to the general public.

d. The purchase or lease a new railroad passenger car that is to be used to provide specified public transportation if the car is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, or to manufacture railroad passenger cars or purchase used cars that have been remanufactured so as to extend their usable life by ten years or more, unless the remanufactured car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, except

that compliance with this clause is not required to the extent that compliance would significantly alter the historic or antiquated character of historic or antiquated railroad passenger cars or rail stations served exclusively by those cars.

e. The purchase or lease a new, used, or remanufactured vehicle with a seating capacity in excess of 16 passengers, including the driver, for use on a fixed route public transportation system, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. If a private entity that operates a fixed route public transportation system purchases or leases a new, used, or remanufactured vehicle with a seating capacity of 16 passengers or fewer, including the driver, for use on the system which is not readily accessible to and usable by individuals with disabilities, it is an unfair discriminatory practice for the entity to fail to operate the system so that, when viewed in its entirety, the system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities.

f. Failing to operate a demand responsive system so that, when viewed in its entirety, the system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities. It is an unfair discriminatory practice for the entity to purchase or lease for use on a demand responsive system a new, used, or remanufactured vehicle with a seating capacity in excess of 16 passengers, including the driver, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the entity can demonstrate that the system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to individuals without disabilities.

(15) To construct a new facility or station to be used in the provision of public transportation services, unless the facilities or stations are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(16) To fail to make alterations necessary in order, to the maximum extent feasible, to make the altered portions of facilities or stations currently used for the provision of public transportation services readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. If the private entity is undertaking an alteration that affects or could affect the usability of or access to an area of the facility containing a

primary function, the entity shall make the alterations so that, to the maximum extent feasible, the path of travel to the altered area, and the bathrooms, drinking fountains, and telephones serving the altered area, are readily accessible to and usable by individuals with disabilities if the alterations to the path of travel or to the functions mentioned are not disproportionate to the overall alterations in terms of cost and scope. The entity raising this defense has the burden of proof, and the department shall review these cases on a case-by-case basis.

For purposes of subsections 139.40(i)(3), 139.40(i)(4), and 139.40(i)(5), "person" or "class of persons" means clients or customers of the covered public accommodation that enter into the contractual, licensing, or other arrangement.

State or local building codes control where applicable. Violations of state or local building codes are not violations of this chapter and must be enforced under normal building code procedures.

Nothing in this subsection requires an entity to permit a person with a disability to participate in and benefit from the goods, services, facilities, privileges, advantages, and accommodations of the entity if the person with a disability poses a direct threat to the health or safety of others. "Direct threat" means a significant risk to the health or safety of others that can not be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids or services.

(l) *Discrimination in business.* It is an unfair discriminatory practice for a person engaged in a trade or business or in the provision of a service:

(1) To refuse to do business with or provide a service to a woman based on her use of her current or former surname.

(2) To impose, as a condition of doing business with or providing a service to a woman, that a woman use her current surname rather than a former surname.

(3) To intentionally refuse to do business with, to refuse to contract with, or to discriminate in the basic terms, conditions, or performance of the contract because of a person's race, national origin, color, sex, sexual orientation, or disability, unless the alleged refusal or discrimination is because of a legitimate business purpose.

Nothing in this subsection shall prohibit positive action plans.

~~(j)~~(m) *Aiding, abetting or facilitating discrimination; reprisals related to discrimination; coercion related to housing.* For any person:

- (1) To conceal or attempt to conceal any discriminatory act forbidden by this title or to aid, abet, compel, coerce, incite or induce, or attempt to induce, another person to discriminate;\_
- (2) To use any trick, artifice, advertisement, sign, form of application, record on inquiry or any device whatsoever to bring about or facilitate discrimination;\_
- (3) To engage in any reprisal, economic or otherwise, because another person opposed a discriminatory act forbidden under this title, has filed a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under this title, or has associated with a person or group of persons of a different race, color, creed, religion, ancestry, national origin, sex, ~~affectional preference~~ sexual orientation, status with regard to disability, age, marital status, status with regard to public assistance or familial status;\_
- (4) To coerce, intimidate, threaten, or interfere with any person in the exercise of or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of any right with regard to real estate granted or protected by subdivisions (e), (f) or (h) of this section.