

THE MINNEAPOLIS CIVIL RIGHTS ORDINANCE, WITH PROPOSED FEMINIST PORNOGRAPHY AMENDMENTS

This is the first of the two ordinances that Mayor Fraser vetoed. For the sake of clarity, we have incorporated it in the civil rights ordinance to which it was to be an amendment.

Ordinance of the City of Minneapolis amending Title 7, Chapter 139 of the Minneapolis Code of Ordinances relating to Civil Rights: In General, and Title 7, Chapter 141 of the Minneapolis Code of Ordinances relating to Civil Rights: Administration and Enforcement, as passed by the City Council of the City of Minneapolis and subsequently vetoed by the Mayor of Minneapolis. Proposed amendments indicated by underline.

Title 7

CIVIL RIGHTS

CHAPTER 139. IN GENERAL

139.10. Findings, declaration of policy and purpose. (a) *Findings.* The council finds that discrimination in employment, labor union membership, housing accommodations, property rights, education, public accommodations and public services based on race, color, creed, religion, ancestry, national origin, sex, including sexual harassment and pornography, affectional preference, disability, age, marital status, or status with regard to public assistance or in housing accommodations based on familial status adversely affects the health, welfare, peace and safety of the community. Such discriminatory practices degrade individuals, foster intolerance and hate, and create and intensify unemployment, sub-standard housing, under-education, ill health, lawlessness and poverty, thereby injuring the public welfare.

- (1) Special findings on pornography: The council finds that pornography is central in creating and maintaining the civil inequality of the sexes. Pornography is a systematic practice of exploitation and subordination based on sex which differentially harms women. The bigotry and contempt it promotes, with the acts of aggression it fosters, harm women's opportunities for equality of rights in employment, education, property rights, public accommodations and public services; create public harassment and private denigration; promote injury and degradation such as rape, battery and prostitution and inhibit just enforcement of laws against these acts; contribute significantly to restricting women from full exercise of citizenship and participation in public life, including in neighborhoods; damage relations between the sexes; and undermine women's equal exercise of rights to speech and action guaranteed to all citizens under the Constitutions and laws of the United States and the State of Minnesota.

(b) *Declaration of policy and purpose.* It is the public policy of the City of Minneapolis and the purpose of this title:

- (1) To recognize and declare that the opportunity to obtain employment, labor union membership, housing accommodations, property rights, education, public accommodations and public services without discrimination based on race, color, creed, religion, ancestry, national origin, sex, including sexual harassment and pornography, affectional preference, disability, age, marital status, or status with regard to public assistance or to obtain housing accommodations without discrimination based on familial status is a civil right;
- (2) To prevent and prohibit all discriminatory practices based on race, color, creed, religion, ancestry, national origin, sex, including sexual harassment and pornography, affectional preference, disability, age, marital status, or status with regard to public assistance with respect to employment, labor union membership, housing accommodations, property rights, education, public accommodations or public services;
- (3) To prevent and prohibit all discriminatory practices based on familial status with respect to housing accommodations;
- (4) To prevent and prohibit all discriminatory practices of sexual subordination or inequality through pornography;
- (5) To protect all persons from unfounded charges of discriminatory practices;
- (6) To eliminate existing and the development of any ghettos in the community; and
- (7) To effectuate the foregoing policy by means of public information and education, mediation and conciliation, and enforcement (citations omitted).

139.20. Definitions. (a) *Affectional preference.* . . .

(b) *Age.* . . .

(c) *Commission.* "Commission" means the Minneapolis Commission on Civil Rights.

(d) *Complainant.* . . .

(e) *Department.* . . .

(f) *Director.* . . .

(g) *Disability.* . . .

(h) *Discriminate or discrimination.* "Discriminate" or "discrimination" includes any act, attempted act, policy or practice, which results in the unequal treatment, separation or segregation of or which otherwise adversely affects any person who is a member of a class protected by this title, and for purposes of discrimination based upon sex it includes sexual harassment.

(i) *Educational institution.* . . .

(j) *Elderly person.* . . .

(k) *Employ.* . . .

(l) *Employee.* . . .

(m) *Employer.* . . .

(n) *Employment.* . . .

(o) *Employment agency.* . . .

(p) *Familial status.* . . .

(q) *Hearing committee.* . . .

(r) *Hire.* . . .

(s) *Labor organization.* . . .

(t) *Lawyer.* . . .

(u) *National origin.* . . .

- (v) *Person*. . . .
- (w) *Public accommodations*. . . .
- (x) *Public services*. . . .
- (y) *Real estate broker; real estate salesman*. . . .
- (z) *Real property*. . . .
- (aa) *Religious or denominational educational institutions*. . . .
- (bb) *Respondent*. . . .
- (cc) *Review committee*. . . .

(dd) *Sex*. "Sex" means the character of being male or female and encompasses, but is not limited to, pregnancy, childbirth, disabilities related to pregnancy or childbirth and sexual harassment.

(ee) *Sexual harassment*. "Sexual harassment" includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other verbal or physical conduct, or communication of a sexual nature when:

- (1) Submission to that conduct, or communication, is made a term or condition, either explicitly or implicitly, of obtaining the services of a labor organization, employment, the services of an employment agency, real estate, the services of a lending institution, public accommodations, public services, or the services of an educational institution, or;
- (2) Submission to or rejection of that conduct or communication is used as a factor in decisions affecting that individual in obtaining the services of a labor organization, employment, the services of an employment agency, real estate, the services of a lending institution, public accommodations, public services, or the services of an educational institution, or;
- (3) That conduct or communication has the purpose or effect of substantially interfering with an individual in regard to, or creating an intimidating, hostile or offensive environment in regard to the services of a labor organization, employment, the services of an employment agency, real estate, the services of a lending institution, public accommodations, public services, or the services of an educational institution; and in the case of employment, the employer knows or should know of the existence of the harassment and fails to take timely and appropriate action.

(ff) *Status with regard to public assistance*. . . .

(gg) *Pornography*. Pornography is a form of discrimination on the basis of sex.

- (1) Pornography is the sexually explicit subordination of women, graphically depicted, whether in pictures or in words, that also includes one or more of the following:
 - (i) women are presented dehumanized as sexual objects, things or commodities; or
 - (ii) women are presented as sexual objects who enjoy pain or humiliation;
or
 - (iii) women are presented as sexual objects who experience sexual pleasure in being raped; or
 - (iv) women are presented as sexual objects tied up or cut up or mutilated or bruised or physically hurt; or
 - (v) women are presented in postures of sexual submission; or
 - (vi) women's body parts—including but not limited to vaginas, breasts, and buttocks—are exhibited, such that women are reduced to those parts; or
 - (vii) women are presented as whores by nature; or
 - (viii) women are presented being penetrated by objects or animals; or
 - (ix) women are presented in scenarios of degradation, injury, abasement,

torture, shown as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual.

- (2) The use of men, children, or transsexuals in the place of women in (1)(i-ix) above is pornography for purposes of subsections (l)-(p) of this statute.

139.30. Exemptions.

. . . . [inapplicable to pornography]

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

- (a) *Discrimination by a labor organization.* . . .
- (b) *Discrimination in employment.* . . .
- (c) *Discrimination by an employment agency.* . . .
- (d) *Discriminatory practices in furnishing employment information and employment advertising.* . . .
- (e) *Discrimination in real estate.* . . .
- (f) *Discriminatory representation by real estate brokers or real estate salespersons.* . . .
- (g) *Discrimination in lending.* . . .
- (h) *Discrimination in public accommodations.* . . .
- (i) *Discrimination in public services.* . . .
- (j) *Discrimination in educational institutions.* . . .
- (k) *Aiding, abetting or facilitating discrimination; reprisals related to discrimination.* 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, sex, affectional preference, status with regard to disability, marital status, status with regard to public assistance or familial status.

(l) Discrimination by trafficking in pornography. The production, sale, exhibition, or distribution of pornography is discrimination against women by means of trafficking in pornography:

- (1) City, state, and federally funded public libraries or private and public university and college libraries in which pornography is available for study, including on open shelves, shall not be construed to be trafficking in pornography but special display presentations of pornography in said places is sex discrimination.
- (2) The formation of private clubs or associations for purposes of trafficking in pornography is illegal and shall be considered a conspiracy to violate the civil rights of women.
- (3) Any woman has a cause of action hereunder as a woman acting against the subordination of women. Any man or transsexual who alleges injury by pornography in the way women are injured by it shall also have a cause of action.

(m) Coercion into pornographic performances. Any person, including transsexual, who is coerced, intimidated, or fraudulently induced (hereafter, "coerced") into performing for pornography shall have a cause of action against the maker(s), seller(s), exhibitor(s) or distributor(s) of said pornography for damages and for the elimination of the products of the performance(s) from the public view.

- (1) Limitation of action. This claim shall not expire before five years have elapsed from the date of the coerced performance(s) or from the last appearance or sale of any product of the performance(s), whichever date is later;
- (2) Proof of one or more of the following facts or conditions shall not, without more, negate a finding of coercion;
 - (i) that the person is a woman; or
 - (ii) that the person is or has been a prostitute; or
 - (iii) that the person has attained the age of majority; or
 - (iv) that the person is connected by blood or marriage to anyone involved in or related to the making of the pornography; or
 - (v) that the person has previously had, or been thought to have had, sexual relations with anyone, including anyone involved in or related to the making of the pornography; or
 - (vi) that the person has previously posed for sexually explicit pictures for or with anyone, including anyone involved in or related to the making of the pornography at issue; or
 - (vii) that anyone else, including a spouse or other relative, has given permission on the person's behalf; or
 - (viii) that the person actually consented to a use of the performance that is changed into pornography; or
 - (ix) that the person knew that the purpose of the acts or events in question was to make pornography; or
 - (x) that the person showed no resistance or appeared to cooperate actively in the photographic sessions or in the sexual events that produced the pornography; or
 - (xi) that the person signed a contract, or made statements affirming a willingness to cooperate in the production of pornography; or
 - (xii) that no physical force, threats, or weapons were used in the making of the pornography; or
 - (xiii) that the person was paid or otherwise compensated.

(n) Forcing pornography on a person. Any woman, man, child, or transsexual who has pornography forced on him/her in any place of employment, in education, in a home, or in any public place has a cause of action against the perpetrator and/or institution.

(o) Assault or physical attack due to pornography. Any woman, man, child, or transsexual who is assaulted, physically attacked or injured in a way that is directly caused by specific pornography has a claim for damages against the perpetrator, the maker(s), distributor(s), seller(s), and/or exhibitor(s), and for an injunction against the specific pornography's further exhibition, distribution, or sale. No damages shall be assessed (A) against maker(s) for pornography made, (B) against distributor(s) for pornography distributed, (C) against seller(s) for pornography sold, or (D) against exhibitors for pornography exhibited prior to the enforcement date of this act.

(p) Defenses. Where the materials which are the subject matter of a cause of action under subsections (l), (m), (n), or (o) of this section are pornography, it shall not be a defense that the defendant did not know or intend that the materials were pornography or sex discrimination.

(q) Severability. Should any part(s) of this ordinance be found legally invalid, the remaining part(s) remain valid.

(r) Subsections (l), (m), (n), and (o) of this section are exceptions to the second clause of section 141.90 of this title.

(s) *Effective date.* Enforcement of this ordinance of December 30, 1983, shall be suspended until July 1, 1984 ("enforcement date") to facilitate training, education, voluntary compliance, and implementation taking into consideration the opinions of the City Attorney and the Civil Rights Commission. No liability shall attach under (l) or as specifically provided in the second sentence of (o) until the enforcement date. Liability under all other sections of this act shall attach as of December 30, 1983.

139.50. Provisions required in contracts with city.

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139.60. Responsibilities and duties of city employees; act of discrimination.

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CHAPTER 141. ADMINISTRATION AND ENFORCEMENT

141.10. Commission on civil rights established.

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141.20. Commission membership.

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141.30. Organizational and administrative powers and duties of commission.

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141.40. Substantive and procedural powers and duties of commission.

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141.50. Procedure for complaints; investigations, conciliation and hearings before commission. (a) *Complaint filing.* Any person believing discrimination has occurred may file with the director a verified written complaint under oath which shall state the name and address of each person complained against (respondent), and shall set forth the pertinent facts as known to the complainant. A complaint may be filed only if the matter complained of occurred within six (6) months prior to filing the complaint.

(b) *Preliminary inquiry into complaint.* Promptly upon the filing of any complaint, the director shall make such investigation as the director may deem appropriate to determine whether there is probable cause to believe that the allegations of discrimination are well founded. While the director is investigating a complaint, the director may attempt to conciliate the matter complained of prior to the signing of a verified complaint or prior to making a determination of probable cause. Where the complaint alleges an unfair discriminatory act under section 139.40(e), the director of the department of inspections shall be notified of the pendency of the complaint and of its subsequent resolution.

(c) *Probable cause.* After investigating a complaint and after consulting with the city attorney's office, the director shall make a determination as to whether there is probable cause to believe that the allegations of discrimination are well founded.

(d) *Finding of no probable cause and review thereof.* If the director makes a determination of no probable cause, the director shall notify by mail the complainant and respondent of such a determination and of the complainant's right to appeal the determination to a review committee. The complainant may within fifteen (15) days after receiving such notice file an appeal in writing with the director, who shall promptly transmit said appeal to the chairperson of the commission. The chairperson shall designate three (3) members of the commission, at least one of whom shall be a lawyer, to review the director's determina-

tion. Upon request the complainant shall be able to make a presentation to the review committee. The review committee may then either affirm or reverse the director's decision or send the complaint back to the director for additional investigation. No member of a review committee shall act as a member of a hearing committee in the same case.

(e) *Finding of probable cause and conciliation.* If the director or a review committee, following an appeal, makes a determination of probable cause, the director shall immediately endeavor to eliminate the acts or practices complained of by conciliation and persuasion. If the director cannot do so, then the director shall refer the complaint to the commission.

(f) *Directors authority to dismiss a complaint and review thereof.* If at any time subsequent to the signing of a verified complaint and prior to referral of the complaint to the commission the director shall determine the charge is without merit, is frivolous, or the complainant has consistently failed to provide or has refused to provide requested information, the director may dismiss the complaint. The director shall set forth the reasons for the dismissal in writing and shall mail to the complainant and the respondent a copy of this written decision and a statement explaining the complainant's right to file a civil action or to appeal the determination to a review committee and subsequently file a civil action. The complainant's filing of an appeal with the director and the appointment and operation of the review committee shall follow the procedures set forth in section 141.50(d).

(g) *Notice to commissioners.* Whenever the director makes a finding of no probable cause or dismisses a complaint, the director shall provide written notice of this action to the commission.

(h) *Hearing procedure.* Within thirty (30) days following the referral of a complaint, the chairperson of the commission shall designate three (3) members of the commission, at least one of whom shall be a lawyer, to serve as a hearing committee, shall designate a chairperson of the hearing committee and shall set a time and place within the city for the hearing of such complaints and the answers to the allegations thereof.

(i) *Determination prior to public hearing.* At any time after a complaint has been referred to a hearing committee, but before the public hearing has been completed, the hearing committee may issue an order dismissing a complaint because it has been conciliated, because it appears the allegations were not well founded or for any other justifiable reason. However, the hearing committee shall attach to its order written findings of fact and conclusions of law supporting the dismissal, and shall serve a copy upon all parties by mail. Any such dismissal shall be reviewable the same as any other final decision in a contested case, as provided in Section 15.0424 of Minnesota Statutes.

(j) *Hearings.*

- (1) Public hearings shall be conducted by the hearing committee who shall conduct the hearing in accordance with Chapter 15 of Minnesota Statutes, the administrative procedure act.
- (2) Each member of a hearing committee, review committee or a presiding officer of a prehearing conference, shall be paid fifty dollars (\$50.00) per day while actually sitting and serving at the public hearing, the review hearing or the prehearing conference. Such committee members or presiding officers shall be paid thirty-five dollars (\$35.00) when service does not exceed four (4) hours in any one day. No fee shall be paid for any work done prior or subsequent to the holding of the public hearing, the review hearing or the prehearing conference. Such fees shall be authorized by the director after being requested in writing by the member.
- (3) Whenever, in the director's judgment, a public hearing will take longer than two (2) full days to complete, the director shall certify such fact to the commission and the chairperson of the commission may appoint a hearing examiner who is a lawyer and who may or may not be a member of the commission to conduct the public hearing. In such cases, the hearing examiner shall have the same duties, obligations and powers as a hearing committee except that

the hearing examiner shall be paid fifty dollars (\$50.00) per day while actually sitting and serving at the public hearing and shall, in addition thereto, be entitled to fifty dollars (\$50.00) per day, up to a maximum of two (2) days, for each day subsequent to the public hearing actually spent deciding the case and preparing the findings of fact, conclusions of law and order.

(k) *Subpoenas.* The chairperson of the commission, a hearing examiner or a hearing committee may, at the request of any party, apply to the district courts for subpoenas to require witnesses to appear at any regularly scheduled public hearing before a hearing committee to give testimony and to bring with them for examination any books, papers or documents relative to any verified complaint which is the subject matter of a public hearing. The chairperson of the commission may apply to the district court to punish a person who disobeys a subpoena obtained at the chairperson's request in like manner as a contempt proceeding is initiated in the district courts of this state.

(l) *Findings.* If the hearing committee finds that the respondent has engaged in discrimination, the hearing committee shall make written findings of fact and conclusions of law, and shall issue an order directing the respondent to cease and desist from the discriminatory act or practice found to exist, and to take such other affirmative action as in the judgment of the hearing committee will effectuate the purposes of this title. Such order shall be a final decision for purposes of appeal or enforcement. In all cases, the hearing committee may order the respondent to pay an aggrieved party, who has suffered discrimination, compensatory damages, including damages for mental anguish or suffering, and in all cases, may also order the respondent to pay an aggrieved party who has suffered discrimination punitive damages in an amount not less than one hundred dollars (\$100.00) nor more than six thousand dollars (\$6,000.00) and reasonable attorney's fees. Punitive damages shall be awarded pursuant to Minnesota Statutes Section 549.20. In any case where a political subdivision is a respondent, the total of punitive damages awarded an aggrieved party may not exceed six thousand dollars (\$6,000.00) and in that case if there are two (2) or more respondents, the punitive damages may be apportioned among them. Punitive damages may only be assessed against a political subdivision in its capacity as a corporate entity and no regular or ex officio member of a governing body of a political subdivision shall be personally liable for payment of punitive damages pursuant to this subdivision. In addition to the aforesaid remedies, in a case involving discrimination in:

- (1) *Employment.* The hearing committee may order the hiring, reinstatement or upgrading of an aggrieved party who has suffered discrimination, with or without back pay, admission or restoration to membership in a labor organization, or his or her admission to or participation in an apprenticeship training program, on-the-job training program or other retraining program, or any other relief the hearing committee deems just and equitable.
- (2) *Housing.* The hearing committee may order the sale, lease or rental of the housing accommodation or other real property to an aggrieved party who has suffered discrimination, or the sale, lease or rental of a like accommodation or other real property owned by or under the control of the person against whom the complaint was filed, according to terms as listed with a real estate broker, or if no such listing has been made, as otherwise advertised or offered by the vendor or lessor, or any other relief the hearing committee deems just and equitable.
- (3) *Pornography:* The hearing committee or court may order relief, including the removal of violative material, permanent injunction against the sale, exhibition or distribution of violative material, or any other relief deemed just and equitable, including reasonable attorney's fees.

The hearing committee shall cause the findings of fact, conclusions of law and order to be served on the respondent personally, the charging party by registered or certified mail, and shall furnish copies to the director and the city attorney.

141.60. Civil action, judicial review and enforcement. (a) *Civil actions.***(1) AN INDIVIDUAL ALLEGING A VIOLATION OF THIS ORDINANCE MAY BRING A CIVIL ACTION DIRECTLY IN COURT.****(2) A complainant may bring a civil action at the following times:**

- (i) Within forty-five (45) days after the director, a review committee or a hearing committee has dismissed a complaint for reasons other than a conciliation agreement to which the complainant is a signator; or
- (ii) After forty-five (45) days from the filing of a verified complaint if a hearing has not been held pursuant to section 141.50 or the department has not entered into a conciliation agreement to which the complainant is a signator. The complainant shall notify the department of his/her intention to bring a civil action, which shall be commenced within ninety (90) days of giving the notice. A complainant bringing a civil action shall mail, by registered or certified mail, a copy of the summons and complaint to the department and upon receipt of same, the director shall terminate all proceedings before the department relating to the complaint and shall dismiss the complaint.

No complaint shall be filed or reinstated with the department after a civil action relating to the same unfair discriminatory practice has been brought unless the civil action has been dismissed without prejudice.

(b) *Judicial review.* Any person aggrieved by a final decision of a hearing committee or a review committee in a contested case, may seek judicial review in the district court as provided in Chapter 15 of Minnesota Statutes, the Administrative Procedure Act, and the district court shall review the decision in conformance with the provisions of this title.

(c) *Enforcement.* When a respondent fails or refuses to comply with a final decision of a hearing committee, the director may file with the district court a petition requesting the court to order the respondent to comply with the order, thereupon the court shall issue an order to show cause directed to the respondent why an order directing compliance should not be issued. Notwithstanding the provisions of any law or rule of civil procedure to the contrary, the court shall examine at the hearing on the order to show cause all the evidence in the record and may amend the order in any way the court deems just and equitable. If the hearing committee ordered an award of damages and if the court sustains any or all of the award, it shall enter judgment on that order in the same manner as in any civil suit.

141.70. Duties of the city attorney. . . .**141.80. Department of civil rights.**
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141.90. Conflict with state action or criminal statute. No matter shall be heard or complaint issued pursuant to the provisions of this title when the matter has been previously considered by the State of Minnesota Commissioner of Human Rights as a matter within his or her jurisdiction, nor when the alleged discrimination is part of or arises out of an incident or occurrence which in itself could give rise to a criminal prosecution for the violation of any state statute other than the state act against discrimination.

141.100. Continuity. . . .