

Vetoed

MUNICIPALITY OF ANCHORAGE, ALASKA

AO NO. 77-75

AN ORDINANCE ESTABLISHING AN EQUAL RIGHTS COMMISSION AND ESTABLISHING ITS DUTIES.

THE ANCHORAGE ASSEMBLY HEREBY ORDAINS:

Section 1. Prohibition. The public policy of Anchorage is declared to be equal opportunity for all persons. The Anchorage Assembly finds that discrimination in employment, housing, public accommodations, education and financing practices based upon race, color, sex, religion, national origin, marital status, age, or physical handicap adversely affects the welfare of the community. Accordingly such discrimination is prohibited.

Section 2. Establishment. Pursuant to the provisions of the Anchorage Municipal Charter there is established an Equal Rights Commission of nine (9) persons, which shall be known as the Anchorage Equal Rights Commission.

Section 3. Appointment. The Mayor shall appoint members of the Commission to three (3) year terms, subject to confirmation by the Assembly. Of those members first appointed, three shall be appointed for a term of one year, three for a term of two years, and three for a term of three years. A member chosen to fill a vacancy otherwise than by expiration of a term shall be appointed for the unexpired term of the member whom he/she is to succeed. A member of the Commission shall be eligible for reappointment.

Section 4. Powers and Duties. The Equal Rights Commission may:

- A. Hold public hearings and issue orders under Section 8 of this ordinance and issue orders under Section 10 of this ordinance.
- B. Administer oaths and affirmations, certify its official acts, issue subpoenas, subpoenas duces tecum, and other legal process to compel the attendance of witnesses and the production of testimony, books, records, papers, accounts, documents or things in any inquiry, investigation, hearings or proceeding before the commission; the commission may petition Superior Court

of the State of Alaska, having jurisdiction, to enforce its subpoenas, subpoenas duces tecum and other legal process.

- C. Intervene in any court proceeding brought under this ordinance.
- D. Enter into agreement with counterpart agencies at all governmental levels to promote effective and efficient enforcement of the law.
- E. Grant relief described in Section 10 of this Ordinance.
- F. Develop programs designed to bring about the prevention and elimination of discrimination.
- G. Hire, subject to the approval of the Mayor, an Executive Director who shall serve at the pleasure of the Commission.
- H. Delegate to the Executive Director all powers and duties given it by this Ordinance, except the power to hold hearings, issue orders and hire the Executive Director.
- I. Adopt procedural and interpretive rules necessary to fulfill the intent of this ordinance.

Section 5. Unlawful Practices.

(A) Unlawful Practices In The Sale or Rental of Real Property:
It is unlawful for the owner, lessor, manager, agent, or other person having the right to sell, lease, rent or advertise real property;

(1) to refuse to sell, lease or rent the real property to a person because of race, religion, age, sex, color, national origin, marital status or physical handicap.

(2) to discriminate against a person because of race, religion, age, sex, color, national origin, marital status or physical handicap in a term, condition or privilege relating to the use, sale, lease or rental of real property;

(3) to make a written or oral inquiry or record of the race, religion, age, sex, color, national origin, marital status or physical handicap of a person seeking to buy, lease or rent real property;

(4) to offer, solicit, accept, use or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or sources in connection therewith because of a person's race, religion, age, sex, color, national origin, marital status or physical handicap;

(5) to represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is available, or to refuse a person the right to inspect real property because of the race, religion, age, sex, color, national origin, marital status or physical handicap of that person or because of any person associated with that person;

(6) to engage in blockbusting;

(7) to circulate, issue or display, make, print or publish, or cause to be made or displayed, printed or published, any communication, sign, notice, statement or advertisement, with respect to the use, sale, lease or rental of real property that indicates any preference, limitation, specification or discrimination based on race, religion, age, sex, color, national origin, marital status or physical handicap.

(B) Unlawful Financing Practice. It is unlawful for an insurance company, a financial institution or other commercial institution extending secured or unsecured credit, upon receiving an application for financial assistance or credit for the acquisition, construction, rehabilitation, repair or maintenance of a housing accommodation or other property or services, or the acquisition or improvement of unimproved property, or upon receiving an application for any sort of loan of money, or upon receiving an application for insurance, to permit one of its officials or employees during the execution of his/her duties:

(1) to discriminate against the applicant because of race, religion, age, sex, color, national origin, marital status or physical handicap in a term, condition or privilege relating to the obtainment or use of the institution's financial assistance, insurance or credit, except to the extent of a federal statute or regulation applicable to a transaction of the same character.

(2) to make or cause to be made a written or oral inquiry or record of the race, religion, age, sex, color.

national origin, marital status or physical handicap of a person seeking the institution's financial assistance, insurance, or credit unless the inquiry is for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit and is not made or used in order to discriminate in a determination of credit worthiness;

(3) to refuse to extend credit, issue a credit card, insure or make a loan to a single, divorced, pregnant or married person, who is otherwise creditworthy if so requested by the person.

(4) to refuse to insure or to issue a credit card to a married person in that person's name, if so requested by the person provided, however, that the person so requesting a card may be required to open an account in that name, and who is otherwise creditworthy, if so requested by the person.

(C) Unlawful Employment Practices. It is unlawful for:

(1) an employer, to refuse employment to a person, or to bar him/her from employment, or to discriminate against him/her in compensation or in a term, condition, or privilege of employment or to discharge, expel, reduce, suspend or demote him/her because of his/her race, religion, age, sex, color, national origin, marital status or physical handicap unless the reason for the discrimination is a bona fide occupational qualification;

(2) a labor organization, because of a person's sex, marital status, change in marital status, pregnancy, parenthood, age, race, religion, color or national origin, to exclude or to expel him/her from its membership, or to discriminate against one of its members or employer or employee;

(3) a person, employer or employment agency to broadcast, publish, print, circulate or cause to be broadcast, published, printed or circulated a statement, advertisement or publication, inquiry or advertisement in connection with prospective employment or to use a form of application for employment which expresses directly or indirectly, a limitation, specification, preference or discrimination as to race, religion, age, sex, color, national origin, marital status or physical handicap;

(4) a person to discriminate in the payment of wages as between sexes, or to employ a person of one sex in an occupation at a salary or wage rate less than that paid to a person of another sex for work of comparable character or work in the same operation, business or type of work in the same locality.

(D) Unlawful Practices in Places of Public Accommodation.

It is unlawful for a person, whether the owner, operator, or agent or employee of an owner or operator of a public accommodation:

(1) to refuse, withhold from or deny to a person any of its accommodations, advantages, facilities, benefits, privileges, services or goods of that place on account of race, religion, age, sex, color, national origin, marital status or physical handicap.

(2) to publish, circulate, issue, display, post or mail a written or printed communication, notice or advertisement which states or implies:

(A) that any of the services, goods, facilities, benefits, accommodations, advantages or privileges of the public accommodation will be refused, withheld from or denied to a person of a certain race, religion, age, sex, color, national origin, marital status or physical handicap, or

(B) that the patronage or presence of a person belonging to a particular race, religion, age, sex, color, national origin, marital status or physical handicap, is unwelcome, not desired, solicited, objectionable or unacceptable.

(3) to make a written or oral inquiry concerning the race, religion, age, sex, color, national origin, marital status or physical handicap of an individual in connection with the solicitation, reservation, booking, sale, or dispensing of accommodation, advantage, facility, benefit, privilege, service or good.

(E) Unlawful Practice In Educational Institutions.

Discrimination is lawful for a religious or denominational institution or organization, or an organization operated for charitable or educational purposes which is operated, supervised, or controlled by or in connection with a religious or denominational institution or organization limiting admission to,

or giving preference in, its accommodations, advantages, facilities, benefits or services to persons of the same religion or denomination, or from making a selection of applicants or individuals that is reasonably calculated to promote the religious principles for which it is established or maintained. Such organizations, however, remain subject to the provisions in this ordinance with regard to race, color, age, national origin, sex, physical handicap or marital status.

It is unlawful for a person operating or assisting in the operation of an educational institution:

(1) to refuse to admit or otherwise to discriminate against an individual with respect to the terms, conditions, accommodations, advantages, facilities, benefits, privileges, or services of that institution on account of race, religion, age, sex, color, national origin, marital status or physical handicap.

(2) to make or use a written or oral inquiry or form of application for admission that elicits or attempts to elicit information concerning the race, religion, age, sex, color, national origin, marital status or physical handicap of an applicant for admission;

(3) to require or cause to be required that a photograph of an applicant for admission be submitted with an application for admission;

(4) to publish, circulate, or display, or cause to be published, circulated or displayed, a written, printed, oral or visual communication, advertisement, catalogue, or any other form of publicity relating to admission that expresses or indicates a preference, limitation, specification, or discrimination on account of the race, religion, age, sex, color, national origin, marital status or physical handicap of an applicant for admission;

(5) to establish, announce, or follow a policy of denial or limitation of education opportunities for members of a group on account of race, religion, age, sex, color, national origin, marital status or physical handicap.

(6) to use in the recruitment of potential applicants for admission a service or agency that discriminates against individuals on account of race, religion,

age, sex, color, national origin, marital status and physical handicap.

(F) Unlawful Practices By The Municipality of Anchorage. It is unlawful for the Municipality of Anchorage or any public agency thereof:

(1) to refuse, withhold from or deny to a person any local, state or federal funds, services, goods, facilities, advantages or privileges because of race, religion, age, sex, color, national origin, marital status or physical handicap.

(2) to publish, circulate, issue, display, post or mail a written or printed communication, notice or advertisement which states or implies that any local, state or federal funds, services, goods, facilities, advantages or privileges of the office or agency will be refused, withheld from or denied to a person of a certain race, religion, age, sex, color, national origin, marital status or physical handicap or that the patronage of a person belonging to a particular race, religion, age, sex, color, national origin, marital status, or physical handicap is unwelcome, not desired or solicited.

(G) Lawful Practices. Notwithstanding any provision of this section, it shall not be unlawful for a person to in connection with employment, housing, financing or insurance, public accommodation, education or governmental service to make or keep records identifying the race, religion, age, sex, color, national origin, marital status, or physical handicap if the purpose of the record is to comply with Federal or State equal opportunity laws or regulations or in furtherance of a program designed to ensure compliance with this ordinance.

Section 6. Complaint. A person who believes he/she is aggrieved by any discriminatory conduct prohibited by the Ordinance may file a written complaint with the Commission within 120 days from the date of the alleged discriminatory conduct, stating the name and address of the person alleged to have engaged in discriminatory conduct, and the particulars of the act. In like manner, the Executive Director may file a complaint when an alleged discriminatory act against an individual or group of individuals comes to his attention.

Section 7. Investigation and Conciliation. The Commission shall investigate promptly and impartially the matters set out in the filed complaint. If it determines that the allegations are supported by substantial evidence, it shall immediately

attempt to eliminate the discriminatory act or practice by conference, persuasion and conciliation.

Section 8. Public Hearing. If the Commission determines that the efforts to eliminate the alleged discrimination are unsuccessful, the Commission shall serve written notice together with a copy of the complaint as it may be amended, requiring, the person, employer, labor organization or employment agency charged in the complaint to answer the allegations of the complaint at a public hearing before the Commission. The time and place of the public hearing will be specified in the notice. The case in support of the complainant shall be presented before the Commission by the Executive Director or his/her designee, provided that such designee does not concurrently represent the complainant. The complainant may be represented by counsel.

The person charged in the complaint may file a written answer to the complaint and may appear at the hearing in person or by counsel and submit testimony. The complainant has the power reasonably and fairly to amend the complaint and the respondent has the power reasonably and fairly to amend his answer at any time up to and including the time of hearing. The Commission is not bound by the strict rules of evidence prevailing in courts of law but shall exclude evidence not relevant to the merits of the proceeding. The testimony taken at the hearing shall be under oath or affirmation and shall be transcribed. Any person may obtain a transcript upon payment of reasonable costs thereof.

Section 9. Injunctive Relief, Temporary Restraining Order. At any time after a complaint is filed under this Ordinance or in cases of non-compliance with a lawful Commission order, the Commission may file a petition in any Superior Court of the State of Alaska having jurisdiction seeking temporary or permanent injunctive relief. This includes the granting of a temporary restraining order not to exceed 10 days in duration, unless a longer period is agreed to by the parties, and the granting of preliminary and/or permanent injunction following a Court hearing.

Section 10. Order.

A. At the completion of the hearing, if the Commission finds that a person against whom a complaint was filed has engaged in discriminatory conduct it shall order him to refrain from engaging in discriminatory conduct. The order shall include findings of fact, and may prescribed conditions on the respondent's future conduct relevant to the type of

discrimination. In a case involving discrimination in:

(1) employment, the Commission may order any equitable relief including but not limited to the hiring, reinstatement or upgrading of an employee or group of employees with or without back pay, restoration to membership in a labor organization, or his admission to or participation in an apprenticeship training program, on-the-job training program, or other retraining program.

(2) housing, the Commission may order any equitable relief, including but not limited to the sale, lease or rental of the housing accommodation to the aggrieved person if it is still available, or the sale, lease or rental of the next vacancy in a like accommodation, owned by the person against whom the complaint was filed;

(3) public accommodations, the Commission may order any equitable relief including but not limited to restoration to membership in a place of public accommodation, or admission to or service in a place of public accommodation.

(4) financial institutions, the Commission may order any equitable relief, including but not limited to the issuance of a credit card to a person, the approval of a loan to a person, or the issuance of insurance to a person.

(5) educational institutions, the Commission may order any equitable relief, including but not limited to admission to the institution or admission to the program or programs of the institution.

B. The Commission may monitor compliance with orders. The order may require a report or reports to be made to the Commission on the manner of compliance.

C. If the Commission finds that a person against whom a complaint was filed has not engaged in the discriminatory conduct alleged in the complaint, it shall issue and cause to be served

on the complainant an order dismissing the complaint.

D. A copy of all orders issued following public hearing shall be filed with the Municipal Attorney.

Section 11. Retaliation, Coercion, Aiding, Abetting and Inciting. It shall be unlawful for a person to discharge, expel, evict, retaliate or to otherwise discriminate against a person because he/she has filed a complaint, testified or assisted in a proceeding under this ordinance. It is unlawful for a person to aid, abet, incite, compel or coerce the doing of an act forbidden under this ordinance or to attempt to do so.

Section 12. Penalty. A person who wilfully resists, prevents, impedes or interferes with the Commission or any of its authorized representatives because of or in the performance of duty under this ordinance or who or which wilfully violates an order of the Commission, is convicted by a court of competent jurisdiction and found guilty is guilty of a misdemeanor punishable by a fine of not more than \$500, or by imprisonment in a jail for not more than 30 days, or by both.

Section 13. Judicial Review and Enforcement.

A. A complainant, or person against whom a complaint is filed or other person aggrieved by an order of the Commission, may obtain judicial review of the order in accordance with AS 44.62.560 - 44.62.570.

B. The Commission may obtain a Court order for the enforcement of any of its orders by filing a complaint with the Superior Court in the Third Judicial District.

Section 14. Effect of Compliance With Order. Immediate and continuing compliance with all the terms of a Commission order is a bar to prosecution for the particular instances of discriminatory conduct described in the accusation filed before the Commission.

Section 15. Legal Assistance. Legal assistance to the Commission shall be provided by the Municipal Attorney.

In any proceeding wherein the Municipality is the respondent, the Commission shall employ temporary legal counsel.

Section 16. Definitions. As used in this Ordinance.

(1) "Age" as used in public accommodations section of this ordinance, is not intended to conflict with A.S. 04.15.060 Purchase by Minors, or other regulations concerning the sale of liquor to minors;

As used in the employment section of this ordinance, is not intended to conflict with Department of Labor Alaska Child Labor Laws (A.S. 23.10.325 - 23.10.370)

(2) "Blockbusting" means any discriminatory practice by real estate brokers, real estate salesmen or employees or agents of a broker or another individual corporation, partnership or organization for the purpose of inducing a real estate transaction from which any such person or its stockholders or members may benefit financially, to represent directly or indirectly that a change has occurred or will or may occur from a composition with respect to race, religion, color or national origin of the owners or occupants of the block, neighborhood or area in which the real property is located, and to represent directly or indirectly that this change may or will result in undesirable consequences in the block, neighborhood or area in which the real property is located, including but not limited to the lowering of property values, an increase in criminal or antisocial behavior or decline in the quality of the schools or other facilities.

(3) "Commission" means the Anchorage Equal Rights Commission.

(4) "Discrimination" means any direct or indirect act or practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial or any other act or practice or differentiation or preference in the treatment of a person or persons because of race, color, religion, national origin, age, sex, marital status or physical handicap, or the aiding, abetting, inciting, coercing or compelling thereof.

(5) "Educational Institutions" means any nursery, kindergarten, elementary or secondary school, academy, college, university, extension course or nursing, secretarial business, vocational, technical, trade, professional school, or day care centers.

(6) "Employee" means an individual employed by a person.

(7) "Employer" means an employer, public or private, of one or more persons.

(8) "Employment Agency" means any person undertaking to procure employees or to procure for employees opportunities to work.

(9) "Financial Institutions" means commercial banks, trust companies, mutual savings banks, cooperative banks, homestead associations, credit unions, bonding companies, surety companies, other commercial institutions which extends secured or unsecured credit or offers insurance.

(10) "Labor Organization" includes any organization which is constituted for the purpose, in whole or in part, of collective bargaining or in dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in connection with employees.

(11) "Marital Status" means any differential treatment because of a person's marital status or change in marital status. This includes differential treatment shown towards a person because he/she is not married, a person because he/she is married, a person because he/she is widowed or divorced, a person because he/she is a parent and unmarried, or a person because she is pregnant and unmarried.

(12) "National Origin" includes ancestry, persons not citizens, their descendants, persons naturalized, and their descendants.

(13) "Person" means one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, employees, employers, employment agencies, labor organizations, joint apprenticeship committees or other legal or commercial entity.

(14) "Physical Handicap" means any physical disability, infirmity, malformation, or disfigurement which is cause by bodily injury, birth defect, or illness, including diabetes, epilepsy, and includes any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, or other remedial appliance or device.

(15) "Public Accommodation" means any place in or through which any business or professional activity is conducted that is open to, accepts or solicits the patronage of or caters or offers goods or services to the general public. This includes but is not limited to a public inn, restaurant, eating house, day

care center, hotel, motel, soda fountain, soft drink parlor, tavern, night club, liquor establishment, roadhouse, place where food or spiritous or malt liquors are sold for consumption, trailer park, resort, campground, mobile home, barber shop, beauty parlor, bathroom, resthouse, theater, swimming pool, skating rink, golf course, cafe, ice cream parlor, transportation company and all other public amusement and business establishments, subject only to the conditions and limitations established by law and applicable alike to all persons.

(16) "Real Property" means a housing accommodation, unimproved property, a building or a portion of a building whether constructed or to be constructed, structures, real estate, lands, tenements, leaseholds, interest in real estate cooperatives, condominiums, and hereditaments, corporeal and incorporeal, or any interest therein, a mobile home, which is or will be used as sleeping quarters of its occupants, or a trailer park.

(17) "Sex Discrimination" means differential or preferential treatment shown towards a person because of one's sex, pregnancy, parenthood, or sexual preference.

Section 17. Severability. If any clause, sentence, paragraph, or part of this act, or the application thereof, to any person of competent jurisdiction to be invalid, such judgment shall not effect, impar or invalidate the remainder of this Ordinance.

Section 18. Effective Date. This Ordinance is effective immediately upon adoption.

PASSED AND APPROVED BY THE ANCHORAGE ASSEMBLY this 30th day of December, 1975.

David A. Rose
Chairman

ATTEST:

Mary Coffey
Municipal Clerk

RETYPE AS AMENDED 1/5/76

Am-279-75

Exhibit H
Mayor's Veto

MUNICIPALITY OF ANCHORAGE

ASSEMBLY MEMORANDUM

NO. _____

To: Chairman of Assembly & Members Meeting Date: January 6, 1976

From: George M. Sullivan, Mayor

Subject: Ordinance AO 77-75 - Equal Rights Commission Ordinance

Pursuant to Section 5.02(c) of the Anchorage Municipal Charter, I hereby veto AO 77-75, An Ordinance Establishing an Equal Rights Commission and Outlining its Duties.

It is with great difficulty that I have reached the conclusion that this ordinance should not be allowed to become law in its present form. At the outset, I affirm that I am wholly in sympathy with basic principles of equal rights and opportunities. However, it is possible to go too far in protecting one set of rights with the result that other equally important rights are abridged.

My principal concern deals with the reference to "sexual preference" in the definition of "sex discrimination". "Sexual preference" is undefined. However, literally construed, it bars discrimination of any sort based on any type of sexual deviation. I believe this term must be omitted in order to avoid extremely difficult and irrational results. The Assembly may wish to put the question of discrimination on the basis of sexual preference on the ballot in order to obtain a clear statement of public sentiment.

If the Assembly agrees with me that this ordinance needs revision, I believe it should look at the effect of the ordinance on the right of privacy. The ordinance is all-encompassing and provides extraordinary authority to the government to review the conduct of private persons. It contains virtually no exemptions.

In the area of real estate sale and rental, for example, the ordinance does not make any exception for the single-apartment or boarding house situation where the owner lives on the premises. By contrast, the Federal Fair Housing Act of 1968 exempts owner-occupied premises accomodating no more than four families. In my opinion, a person who rents an apartment or a single room in his own home has the right to determine, for reasons sufficient to himself, that he will rent that apartment or room only to a particular category of person. Requiring homeowners to rent to all comers may cause the home owner to withdraw his unit from the market altogether. With the current housing shortage no one can desire this result.

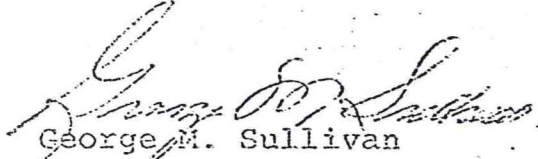
Similarly, in the area of employment, the ordinance contains no exemption for domestic help. The state Human Rights law excludes domestic help from the definition of "employee". I believe that a

housewife is entitled to implement her own preferences with respect to someone working in such close personal proximity within the home.

Each of these examples is only illustrative of the larger principle that personal privacy must be given some scope even if the right of privacy comes into competition with asserted rights of equal opportunity.

The Alaska State Constitution, alone among state constitutions, specifically recognizes the right of privacy. The Alaska Supreme Court has held that the right of privacy bars the State from prohibiting the use of marijuana in the home. It seems to me that the right of privacy is entitled to at least as much weight in determining the type of person which a citizen may be compelled to bring into his own home.

I endorse the principle of equal rights, but I am concerned that an ordinance confirming these rights be fair to all. In the event that the changes noted above are incorporated in a revised version of the ordinance I feel I could and would support the ordinance.


George M. Sullivan
Mayor