

# Sacramento City Council

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## COUNCIL COMMITTEE ON LAW & LEGISLATION

DOUGLAS N. POPE  
CHAIRMAN  
DAVID M. SHORE  
LYNN ROBIE  
WILLIAM A. SMALLMAN

## LAW AND LEGISLATION COMMITTEE MINUTES

4:00 p.m.

April 18, 1985

This meeting was held to discuss the proposed ordinance relating to discrimination on the basis of sexual orientation. The meeting was held in the Sacramento County Board of Supervisors chambers of the County Administration Building. The change of location was due to the fact that the anticipated number of people expected to attend this hearing exceeded the space available in the City Council chambers at City Hall. There were approximately 200 people in attendance.

The meeting was called to order at 3:00 p.m. by Councilman and Chairman Doug Pope. Also present were Councilmembers Bill Smallman, Lynn Robie and Dave Shore.

Doug Pope explained to the audience that the meeting could only go until 5:00 p.m., and in order to allow both proponents and opponents of this proposed ordinance to speak, he requested that the speakers keep their speeches short, and that they try to avoid repetition of other speakers' comments.

Ted Kobey, Assistant City Attorney, gave a brief outline of what this ordinance would cover and how it compared with state law. He explained that this proposed ordinance was presented to the full Council in March of this year by the Sacramentans for Justice, and was then referred to this committee for hearing. He explained that the categories covered employment, business, etc., and that there is no retaliation for anyone who wishes to have this ordinance enforced. A violation would be punishable by actual damages and attorney fees at the court's discretion.

Councilman Dave Shore had some questions.

Shore: Regarding the statute of limitations of 18 months from the time of discovery - why 18 months?

Kobey: I don't know why 18 months. The Sacramentans for Justice might know and can address this when they speak.

Shore: What are the other cities' statutes of limitation?

Kobey: Some are one year and some are two years.

Shore: Regarding attorney fees, do the other ordinances have attorney fees?

Kobey: All the others. Our office feels it is preempted by state law. There are no known test cases for this. State law says attorney fees are left to the agreement of the parties.

Shore: Regarding the Unruh Act, to what extent does your office feel there is an overlap between the City and the State?

Kobey: The Unruh Act applies in housing. It provides for actual damages, attorney fees, and punitive damages up to three times the amount of actual damages but not less than \$250.00.

Shore: So they could file for two causes of action? It doesn't complicate things?

Kobey: Yes, they can.

Shore: Regarding employment, how far does the Unruh Act go?

Kobey: It doesn't. That's what AB 1 is all about. Unruh is strictly civil. This is still a civil matter except for posting of signs. We do not have a provision for punitive damages.

Shore: How many times has this been tested in the courts in other cities?

Kobey: The Oakland ordinance hasn't been tested. It hasn't been a large source of litigation.

Shore: The San Francisco ordinance covers pension rights, etc., of non-marrieds. Is this included in ours?

Kobey: No.

Pope: On page 5 you discuss the Unruh Act. What's the difference between business establishments and employment?

Kobey: Unruh doesn't deal with the matter of employment.

Pope: In order to enforce, do they have to prove damages?

Kobey: They would have to prove any damages that incur.

Pope: If an employment agency is located in the County, are they required to keep a list of homosexuals and employ them in the City but not necessarily in the County? In other words, County businesses do not have to comply?

Kobey: The City employer could be in violation.

Pope: Take an office supply business. It's located in the County but does work in the City. They do not have to hire homosexuals?

Kobey: Under Unruh, they have to sell to businesses run by homosexuals.

Pope: Could a business in the City with an executive office in the County refuse to advance the homosexual from the City office to the County office?

Kobey: I don't know.

Shore: An employer could have an agency in the County hire all their employees and get around the law.

Smallman: Is there anything in the ordinance not already covered elsewhere?

Kobey: Private employment.

Robie: On Page 4 you discuss educational institutions. Is it true it would not apply to public schools and colleges?

Kobey: Public schools are already covered by State law. Also, the City doesn't have authority to regulate other governmental agencies.

Pope: Private non-church schools are not covered; however, if the church school allows other students to attend, they would be covered by the ordinance?

Kobey: True.

Pope: How do you draw the distinction from members and non-members?

Kobey: That is certainly open to discussion. It's not all that clear.

Chairman Doug Pope stated at this time that there would be approximately 45 minutes each for the opponents and proponents of this proposed ordinance. He began with the proponents.

Mr. Ron Gray of the Sacramentoans for Justice spoke first. He explained that the statute of limitations of 18 months was chosen by his organization because it was right between the one year and two year statute of limitations chosen by other cities and seemed reasonable. At this time San Francisco is considering changing from

one year to two years. Oakland is two years. The Unruh Act is three years.

Regarding AB 1, Mr. Gray explained that there is no religious exemption; in California, religious organizations can discriminate. This is not true with federal law. Federal law is closer to this proposed ordinance.

Mr. Gray cited various cases with regard to discrimination, and agreed to furnish these cases to the Council committee. He explained that the San Francisco ordinance has been tested about eight times with a decision of seven times for and once against. Los Angeles has been tested twice, once in 1984 before the Court of Appeal, and won. The Court of Appeal relied on the Los Angeles ordinance rather than Unruh. He then explained why he felt this ordinance was necessary: The Unruh Act is two sentences that can't be figured out. It goes back to 1910 (re-introduced in 1959 with a new name and amendments). This proposed ordinance is very explicit. Most people obey the law, and with this ordinance most people will know exactly what law they must follow.

The next speaker was Sandy Virago of the Human Rights Fair Housing. She stated that discrimination is a sad fact. She explained that her organization conducted tests with married couples, unmarried couples, and two men, all trying to rent a one-bedroom apartment. She explained the statistics regarding this test, and particularly the fact that the gay couple was most often discriminated against. She concluded by saying that the only reason to oppose this ordinance would be to allow continuation of the discrimination in housing.

There was some discussion with Ms. Virago. She stated that even though the laws are there to protect against all discrimination, they are not always followed. She said the Human Rights Fair Housing did not turn the names over to the state, but that the apartment owners were contacted and signed a statement saying they understood and would not do it again. This study was confidential, so no names were mentioned, and it will be kept that way.

Pope: Have you had many complaints?

Virago: About 100 signed complaints and 500 calls per month. four were clearing sexual orientation based. We bring parties together and mediate.

Pope: Did any of these people take action?

Virago: We close the case if it is not successful. I know of one complaint filed but then dropped, and the others had other reasons besides sexual orientation. It shows that discrimination is there, but many people fear that they cannot afford to be identified as gay.

Pope: If the Unruh Act covers this already, why aren't there any cases?

Virago: Fear.

Pope: If we adopt this ordinance, I don't understand. Wouldn't there still be that fear?

Virago: Laws change behavior. Then there will be rules to follow.

The next speaker was Lisa Katz, who was there representing the AB 1 project. She explained that there was, indeed, discrimination in California and in the City of Sacramento in the area of employment. She cited an incident where a man in Merced, who worked in a hospital, was told by his supervisor after the veto of AB-1 that "We don't have to keep you fags on anymore." There is a lot of harrassment in the workplace, making work unpleasant and impossible. Even if there is only one case in Sacramento where a person was denied employment based on sexual orientation, a miscarriage of justice has taken place and must be righted.

Next was a representative of the Sacramento AIDS Foundation. She explained the unfounded fears people have regarding AIDS, and that ignorance spreads faster than AIDS. She stated that it is an old disease which started in Africa, and that it is basically a heterosexual disease. She feels that this ordinance does not have anything to do with AIDS, and that you could not get AIDS by passing laws.

Herb Perry, a labor economist at the University of California, Sacramento, was the next speaker. He gave some statistics about how non-whites and homosexuals were found to be in jobs lower than their qualifications, i.e., post office employees with M.A.s or B.A.s. This was because they were pushed out of the job market due to discrimination. He believes that any discrimination other than the ability to do the work required is against American justice.

George Smith of the State Employees Association stated that their organization was for the ordinance, and that they are also strong supporters of AB 1. No citizen should be denied fair employment or a place to live.

Ruth O'Hearns of the Service and Employers International Union read a resolution their group made in 1984, and gave a copy of this resolution to each Council member. She stated that they have 2400 classified employees in the Sacramento School District and they are against discrimination of any kind.

Bob Klosse, a member of the Law and Legislation Committee of the Central Chapter of the AFL-CIO read a statement in support of this

ordinance, and also gave a copy of his statement to each Council member. He concluded by saying that we should judge workers by what they do on the job, not by what they do in the bedroom.

Representatives of the American Civil Liberties Union and the National Women's Political Caucus each went on record to support any vote against discrimination.

Now it was time for those individuals or groups to speak against the proposed ordinance.

The first speaker was Rev. Michael Rochelle. He stated he did not feel this was merely a spiritual issue. He felt, first of all, that this ordinance was unnecessary, as there was already legislation regarding this matter. If it is not clear, clean it up. If it is not being utilized, enforce it. He also felt this proposed ordinance provides for the protection of gays because of their choice. "We do and should protect the areas for which we have no choice, but do we have the right to force people to rent to people with lifestyles they don't believe in?" He also pointed out the additional costs involved in enforcing such an ordinance. He feels he supports equal and fair treatment, but that we do not need new statutes.

Shore: You agree that AB 1 should be enforced through the State?

Rochelle: No....

Shore: Do you support discrimination?

Rochelle: Only for those things for which we have no choice.

The next speaker was a representative of the California Grocers. He feels this ordinance promotes discrimination. For example, if a gay is not hired among ten equal applicants, we could be sued. But if we do not hire one of the others, they have no recourse. We know we have gays working for us; we did not ask them when they were hired. But I don't feel they should have special privileges.

Bob Richardson spoke next. He was a black pastor. He said he had known discrimination all of his life because of the color of his skin. "Someone said that law change behavior, but I say this is not true. We are still suffering." He felt the proposed ordinance was citing an issue of choice. He feels our young people who, if this ordinance is passed, will feel this is okay. He also hoped that the Committee would take a close look at the City Code relating to sanitation, etc., concerning AIDS.

The next speaker was the Rev. Bill Wilson of the Capital Christian Center. He spoke to express their concern and opposition to the ordinance. "We are for people, but we feel this ordinance is not going to solve a deeper problem."

Shore: Why? What do you mean?

Wilson: We are concerned with the moral issue. We don't think this ordinance should exist at all.

Robie: Would you feel better if churches were removed, or don't you like it at all?

Wilson: We don't like it.

The next speaker was Rev. Timberlake. He stated he wants to keep the San Francisco people out. He feels that the proponents are saying the ordinance doesn't do anything, but he feels there are laws already that aren't being utilized, and that this ordinance adds a brand-new minority. He stated that people who are minorities because of birth or rendered so through accident are a fair minority, but that homosexuality is a choice. The burden of proof is on the employer to prove that he did not hire a person because of his homosexuality. He said that some cities have knocked out ordinances like this after they have been passed.

Mr. Henry Meyer of the Northern California Grocers Association spoke. He said he was here to state some facts. He explained his concern over the health issue, and that now we are forced to hire people "affected by a deadly disease - and I mean deadly." He explained that if he is forced to hire butchers, stock boys, or produce people who are affected by AIDS, this disease could be spread to thousands of people in the Sacramento area. There should be an exemption in the food industry anyway. He concluded with the statement that "When I go to San Francisco, I take my own lunch!"

The Councilmembers discussed the fact that the Sacramento County Health Department does not allow anyone to hire someone infected with a skin disease of any kind, as well as someone with an infectious disease. Doug Pope asked the Attorney's office whether it was legal to ask a person you are considering for a job whether that person has or has had AIDS. Ted Kobey and Bill Carnazzo of the Attorney's office said no, it was not legal. However, Bill Carnazzo stated that employment could be subject to taking a physical examination, and then a doctor could ask that question, especially in the case of food handlers.

Shore: Is there regular testing in the food industry to determine whether workers had infectious diseases such as tuberculosis?

Meyer: No.

Pope: What relationship is being drawn between AIDS and this ordinance?

Meyer: AIDS has no cure.

Pope: This ordinance does not address AIDS victims.

Meyer: Only a small minority carries this disease.

Pope: You feel you should be able to discriminate on this basis?

Meyer: Yes.

Robie: Do you think the food industry should be excluded from this ordinance?

Meyer: I'll think about it. If that's a possibility, I'll certainly come back and give you some remarks.

The next speaker was Betty Gwaizden of the Sacramento Valley Apartment Association. She addressed the "audit" by the Fair Housing and said they appreciate those audits. She feels everyone has a right to live without prejudice. However, she feels this ordinance will cause unnecessary problems on both sides. This law means there would be more litigation, and often without just cause. She said they do not give 30-day notices except for good reasons. If gays are reluctant to come forward now to complain, why would they become more willing with this ordinance? 90% of the homosexual community are excellent tenants, but the 2% will cause problems for everyone. We oppose the ordinance because we believe it is an unnecessary law in our industry, not because of the purpose behind it.

As time was up for further discussion, it was agreed that this hearing would be continued until May 16, 1985, which was the first available date, and it would be held from 2:00-5:00 p.m. at the same location - the County Board of Supervisors chambers in the County Administration building.

Lynn Robie stated that at the next meeting she would like to hear a report on other ordinances which now exist, the complaints they have been getting, etc. She also would like to hear from the Fair Employment and Housing for a description of the Unruh Act and whether it is working or not, and why. She also wants an explanation as to why there is not enforcement when there are complaints. Also, someone from the Health Department should be present to address the AIDS concern and the food handling problem.

The meeting was adjourned at 5:12 p.m.