

THURSDAY, MAY 16, 1985

LAW & LEGISLATIVE COMMITTEE

2:00 PM

Board of Supervisors Chambers
700 H Street
Sacramento, CA

SUBJECT: 1. Ord. Relating to Prohibition of Discrimination on the Basis of
Sexual Orientation

COMMITTEE MEMBERS: Doug Pope (Chair), David Shore, Bill Smallman, Lynn
Robie

Page 3 of 3



CITY OF SACRAMENTO

DEPARTMENT OF LAW
812 TENTH STREET SACRAMENTO CA 95814
SUITE 201 TELEPHONE (916) 449-5346

May 14, 1985

JAMES P. JACKSON
City Attorney
THEODORE H. KOBAY, JR.
Assistant City Attorney
SAMUEL L. JACKSON
WILLIAM P. CARNAZZO
LAWRENCE M. LUNARDINI
DIANE B. BALTER
RICHARD F. ANTOINE
Deputy City Attorneys

Law and Legislation Committee
City Council
Sacramento, California

Honorable Members in Session:

SUBJECT: Ordinance Prohibiting Discrimination
on the Basis of Sexual Orientation

SUMMARY

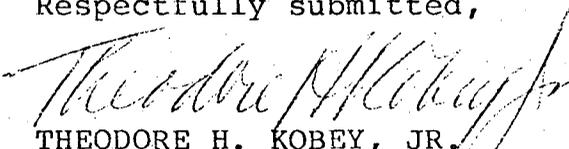
At the conclusion of the April 18, 1985 hearing on the above ordinance, the Committee made several requests for the hearing on May 16.

First, attached is a copy of a letter to Gary Little, the City's Affirmative Action Officer, from the Department of Fair Employment and Housing. Please note that the Department does indicate that its policy is to investigate allegations of discrimination on the basis of sexual orientation in housing and public accommodations. The Department apparently will attempt, if it finds that discrimination has occurred, to conciliate a resolution and, if not successful at that, to bring the parties to a hearing before the Fair Employment and Housing Commission. The Commission may, after hearing, order a remedy.

The Committee also requested that a representative of the County Health Department attend the May 16 hearing to discuss the issue of AIDS in food handling. Dr. Hom of the County Health Department will be in attendance at the meeting.

Finally, the Committee requested that this office survey what other California cities with similar ordinances have done in the area of enforcement. Attached is a memorandum of a survey which was taken.

Respectfully submitted,


THEODORE H. KOBAY, JR.
Assistant City Attorney

THK/jmv
Attachments



STATE AND CONSUMER SERVICES AGENCY

Department of Fair Employment and Housing

1201 I Street, Sacramento, CA 95814
(916) 323-4547

RECEIVED
MAY 11 1985
CITY ATTORNEY'S OFFICE

RECEIVED
MAY 2 1985
PERSONNEL
ADMINISTRATION

May 1, 1985

Gary Little
City of Sacramento
Department of Personnel
801 9th Street
Sacramento, CA 95814

Dear Mr. Little:

This is in response to your request for a description of the procedures used by the California Department of Fair Employment and Housing in responding to complaints of discrimination because of sexual orientation.

The Fair Employment and Housing Act, from which the authority of the Department is derived, has no provisions regarding employment discrimination based on sexual orientation. We, therefore, do not accept for processing complaints alleging employment discrimination on that basis.

The Fair Employment and Housing Act does, however, declare that violations of the Unruh Civil Rights Act (Civil Code Section 51 et. seq.) are unfair practices and thus within the jurisdiction of the Department. Since the Unruh Act is interpreted to prohibit discrimination by business establishments on any arbitrary basis, it is construed to prohibit discrimination in housing and in public accommodations against persons because of their sexual orientation. The Department does, therefore, accept and process complaints alleging a denial of public accommodation (service, access to facilities etc.) or of housing opportunities because of sexual orientation.

To be acceptable, complaints must allege violations which have occurred within a year prior to filing. Remedies available are those necessary to make the individual whole, including compensatory damages.

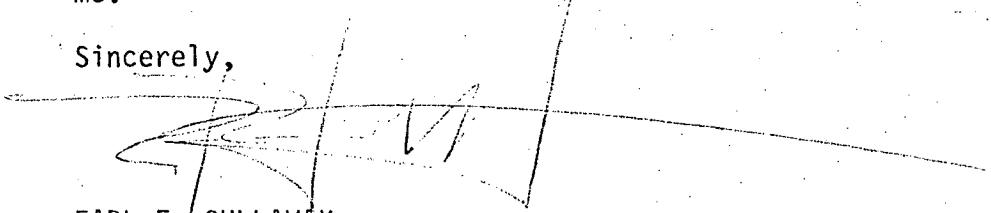


Page 2
Gary Little
May 1, 1985

Allegations accepted are investigated. If we find them to be proven, and are unable to conciliate a resolution between the parties, we may bring them to hearing before the Fair Employment and Housing Commission. The Commission may order a remedy. Its orders may be appealed to the Superior Court.

If you have any further questions, please feel free to contact me.

Sincerely,



EARL E. SULLAWAY
Deputy Director
Enforcement Division

EES:gpr

cc: Michael Vader
John Castello
George Macias



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MEMORANDUM

TO: Ted Kobey, Assistant City Attorney

FROM: Josh Milstein, Law Clerk

RE: Phone Survey of California Cities' Enforcement Practices With Regard to Existing Ordinances on Sexual Orientation Discrimination

OAKLAND

A representative of the City Attorney's office informed me that there have been no private civil actions to enforce the terms of the ordinance. He has seen news articles stating that local gay rights groups want to publicize the existence of the ordinance in order to create some claims. Note that the Oakland ordinance places the onus of enforcement totally on the individual complainant; there is no provision for involvement by the city or district attorney.

BERKELEY

A Deputy City Attorney said no suits have been filed. The Berkeley ordinance does provide for enforcement by the District Attorney.

SAN FRANCISCO

A representative of the San Francisco Human Rights Commission told me that in 1984 alone, 125 complaints "of substance" were investigated by a staff person specifically assigned to enforce the ordinance. She is sending a yearly report to us detailing the enforcement procedure. According to this representative, it appears that the level of enforcement depends on the willingness and resources of the local government to follow up on complaints.

LAGUNA BEACH

The Attorney for the City of Laguna Beach told me that there have been no private enforcement actions nor any suits filed by the city. The Laguna Beach ordinance provides for enforcement by the City Attorney.

Ted Kobey
Re: 'Cities' Enforcement of Gay Rights Ordinance
May 14, 1985
Page Two

LOS ANGELES

A Deputy City Attorney stated that she was unaware of any private enforcement actions. She did mention one Court of Appeals case, Rolon v. Kulwitzky (1984) 153 Cal. App. 3d 289, involving a restaurant that refused to seat two women in an enclosed booth. She also said that a number of complaints were brought to the city's attention, but that the city had resolved them all informally, thereby avoiding litigation. The Los Angeles ordinance allows the City Attorney to seek an injunction; perhaps, according to the Deputy City Attorney, this threat prompted the above-mentioned settlements.

JOSH MILSTEIN

JM/jmv