



COUNCILMEMBER LINDA MAIO
City of Berkeley

CONSENT CALENDAR
December 19, 2017

TO: Honorable Mayor and Members of the City Council

FROM: Councilmembers Linda Maio and Ben Bartlett

SUBJECT: Prohibiting Discrimination on the Basis of Relationship Structure

RECOMMENDATION:

That the Council refer the proposed language to the City Manager requesting that the City amend Chapter 13.31 as proposed to prohibit discrimination on the basis of relationship structure in regard to Employment, Real Estate Transactions, Business Practices, City Facilities and Services or Education on the Basis of Relationship Structure.

BACKGROUND:

A group of citizens of Berkeley drafted the proposed additional language to Chapter 13.31 of Berkeley's Municipal Code with a great deal of care and thoroughness. The existing laws within the City of Berkeley presently protect people against discrimination on the basis of a large number of characteristics. Local laws currently prohibit discrimination not only on the basis of ethnicity, religion, and age, but also on the basis of sexual orientation. However, the current local laws do not specifically provide protection from discrimination for polyamorous people or others involved in consensually non-monogamous relationships. This proposed addition to the existing legal code seeks to remedy this situation by extending all the protections currently provided against discrimination on the basis of sexual orientation to polyamorous people. It is proposed that this be accomplished by adding a new chapter to the existing City of Berkeley law code.

The addition to Chapter 13.31 would prohibit discrimination in employment, housing, business practices, city facilities and services, or education on the basis of relationship structure. This would apply to the City of Berkeley as well as private entities. The prohibitions on discrimination in business practices and education would not apply to religious institutions.

The addition would define "relationship structure" as "the number of consenting adults involved in an intimate relationship and/or the number of intimate personal relationships in which each consenting adult is simultaneously involved." "Relationship structure" would also include an individual's "disposition" or desire for a certain relationship structure, regardless of whether that person is in that type of relationship, or any relationship. The addition would also prohibit advertising that expresses the intent to discriminate, or practice of discriminating, on the basis of relationship structure.

The addition would give any person whose rights under the measure are violated the right to sue for compensatory and punitive damages, attorneys' fees, plus not less than \$200 or more than \$400 in addition. Individuals, may also seek injunctions on behalf of themselves or others to prevent or remedy violations of the measure. The District Attorney may also seek injunctions to prevent or remedy violations of the measure.

See attachment for proposed language.

ATTACHMENTS

BMC Chapter 13.31 Proposed language.

ENVIRONMENTAL SUSTAINABILITY

No environmental sustainability impact.

FINANCIAL IMPLICATIONS

Staff time.

CONTACT

Councilmember Linda Maio, District 1, 510-981-7110

DISCRIMINATION ON THE BASIS OF RELATIONSHIP STRUCTURE

Section 13.31.010: Policy.

It is the policy of the City to eliminate discrimination based on relationship structure within the City.

Section 13.31.020: Finding--Definitions.

A. Findings. Discrimination based on relationship structure poses a substantial threat to the health, safety and general welfare of this community. Such discrimination deprives the City of the fullest utilization of its capacities for development and advancement. Further, existing state and federal restraints on arbitrary discrimination are not adequate to meet the particular problems of discrimination based on relationship structure in this community, so that it is necessary and proper to enact local regulations adapted to the circumstances which exist in this City.

B. Definitions. As used in this chapter, the following words and phrases shall have the meanings ascribed to them in this subsection:

1. "Business establishment" means any entity, however organized, which furnishes goods or services to the general public. An otherwise qualifying establishment which has membership requirements is considered to furnish services to the general public if its membership requirements: (a) consist only of payment of fees; (b) consist of requirements under which a substantial portion of the residents of this City could qualify; or (c) consist of an otherwise unlawful business practice.
2. "Individual" means the same as the term "person." Wherever this chapter refers to the relationship structure of any individual, or the relationship structure of any group, the phrase shall mean the relationship structure of any member of the group.
3. "Person" means any natural person, firm, corporation, partnership or other organization, association or group of persons however organized.
4. "Relationship structure" refers to the number of consenting adults involved in an intimate personal relationship and/or the number of intimate personal relationships in which each consenting adult is simultaneously involved. It also includes an individual's disposition or desire for a certain relationship structure, regardless of whether the individual is currently in that type of, or in any, relationship.
5. Discrimination on the basis of relationship structure shall include both discrimination based on actual knowledge of relationship structure and

discrimination based on supposition or assumption of relationship structure or desired structure.

Section 13.31.030: Employment.

A. Unlawful Employment Practices.

1. Employers--Discrimination. It shall be an unlawful employment practice for an employer to fail or refuse to hire, or to discharge any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions or privileges of employment on the basis of such individual's relationship structure.
2. Employers--Segregation. It shall be an unlawful employment practice for an employer to limit, segregate or classify employees or applicants for employment in any manner which would deprive or tend to deprive any individual of employment opportunities, or adversely affect his or her employment status on the basis of such individual's relationship structure.
3. Employment Agencies. It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment any individual, or otherwise to discriminate against any individual on the basis of such individual's relationship structure.
4. Labor Organizations. It shall be an unlawful employment practice for a labor organization to fail or refuse to include in its membership or to otherwise discriminate against any individual; or to limit, segregate or classify its membership; or to classify or fail or refuse to refer for employment any individual in any way which would deprive or tend to deprive such individual of employment opportunities, or otherwise adversely affect her or his status as an employee or as an applicant for employment on the basis of such individual's relationship structure.
5. Job Training. It shall be an unlawful employment practice for an employer, an employment agency or a labor organization to discriminate against any individual in admission to, or employment in, any program established to provide apprenticeship or other training or retraining, including any on-the-job training program on the basis of such individual's relationship structure.
6. Advertising. It shall be an unlawful employment practice for an employer, employment agency or a labor organization to print, publish, advertise or disseminate in any way, any notice or advertisement with respect to employment, membership in, or any classification or referral for employment or training by any such organization, which expresses an intent to discriminate based on relationship structure.

B. Pretext. It shall be unlawful to do any of the acts mentioned in subdivisions (A)(1) through (A)(6) of this section for any reason that would not have been asserted but for the relationship structure of any individual. Bona Fide Occupational Qualification not Prohibited--Affirmative Defense.

1. Bona Fide Occupational Qualification. Nothing contained in this section shall be deemed to prohibit selection or rejection based upon a bona fide occupational qualification.
2. Affirmative Defense. In any action brought under Section 13.31.090 of this chapter (enforcement), if a party asserts that an otherwise unlawful discriminatory practice is justified as a bona fide occupational qualification, that party shall have the burden of proving: (a) that the job requires a bona fide occupational qualification of a certain relationship structure based on business necessity; and (b) that there exists no less discriminatory means of satisfying the occupational qualification.
3. Exceptions. It shall not be unlawful discriminatory practice for an employer to observe the conditions of a bona fide seniority system or a bona fide employee benefit system, provided such systems or plans are not a pretext to evade the purposes of this chapter; provided, further, that no such system shall provide an excuse for failure to hire any individual because of relationship structure.

C. Notices.

1. Requirements. Every employer with fifteen or more employees, every labor organization with fifteen or more members, and every employment agency shall post and keep posted in conspicuous places upon its premises where notices to employees, applicants for employment and members are customarily posted, the following notice: "Discrimination on the basis of relationship structure is prohibited by law. Berkeley Municipal Code, Sections 13.31.010-13.31.100."
2. Alternate Compliance. Notwithstanding the above, the provisions of this subsection may be complied with by adding the words "relationship structure" to all notices required by federal or state law, and indicating on the notice that discrimination on the basis of relationship structure is prohibited by the Berkeley Municipal Code, Sections 13.31.010 through 13.31.100.
3. Penalty for Noncompliance. Willful violations of this subsection shall be punishable by a fine of not more than fifty dollars for each offense. This is the exclusive penalty for violations of this subsection, except that individuals and organizations may also seek relief as described in **Section 13.31.080**

Section 13.31.040: Housing and other real estate transactions.

A. Unlawful Real Estate Practices.

1. Transactions. Generally, it shall be an unlawful real estate practice for any person to interrupt, terminate or fail or refuse to initiate or conduct any transaction in real property, including but not limited to the rental thereof; to require different and less favorable terms for such transaction; to include in the terms or conditions of a transaction in real property any clause, condition or restriction; or falsely to represent that an interest in real property is not available for transaction, on the basis of any individual's relationship structure.
2. Credit and Insurance. It shall be an unlawful real estate practice for any person to refuse to lend money, guarantee the loan, accept a deed of trust or mortgage, or otherwise refuse to make available funds for the purchase, acquisition, construction, alteration, rehabilitation, repair or maintenance of real property; or impose different and less favorable conditions on such financing; or refuse to provide title or other insurance relating to the ownership or use of any interest in real property, on the basis of any individual's relationship structure.
3. Tenant's Services. It shall be an unlawful real estate practice for any person to refuse or restrict facilities, services, repairs or improvements for any tenant or lessee on the basis of any individual's relationship structure.
4. Advertising. It shall be an unlawful real estate practice for any person to make, print, publish, advertise or disseminate in any way, any notice, statement or advertisement with respect to a transaction or proposed transaction in real property, or with respect to financing related to any such transaction, which expressed an intent to discriminate based on relationship structure or any other prohibited basis.

B. Pretext. It shall be unlawful to do any of the actions mentioned in subdivisions (A)(1) through (A)(4) for any reason that would not have been asserted but for the relationship structure of any individual.

C. Exceptions.

1. Owner Occupied Dwellings. Nothing in this chapter shall be construed to apply to the rental or leasing of any housing unit in which the owner or lessor resides within the living unit and it is necessary for the owner or lessor to use either a bathroom or kitchen facility in common with the prospective tenant(s).
2. Effect on Other Laws. Nothing in this chapter shall be deemed to permit any rental or occupancy of any dwelling unit or commercial space otherwise prohibited by law.

Section 13.31.050: Business establishments.

A. Unlawful Business Practice.

1. Business Practices Generally. It shall be an unlawful business practice for any person to deny any individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any business establishment based on such individual's relationship structure.
2. Advertising. It shall be an unlawful business practice for any person to make, print, publish, advertise or disseminate in any way any notice, statement or advertisement with respect to any business establishment which expresses the establishment's intent to or practice of discriminating based on relationship structure or any other prohibited basis.

B. Pretext. It shall be unlawful to do any of the acts mentioned in subdivisions (A)(1) or (A)(2) of this section for any reason that would not have been asserted but for the relationship structure of any individual.

Section: 13.31.060: City facilities and services.

A. Unlawful Service Practices.

1. City Facilities. It shall be an unlawful service practice for any person to deny any individual the full and equal enjoyment of, or to place different terms and conditions on the availability of, the use of any City facility on the basis of such individual's relationship structure.
2. City Services. It shall be an unlawful service practice for any person to deny any individual the full and actual enjoyment of, or to impose different terms or conditions on the availability of, any City service on the basis of such individual's relationship structure.
 - a. Supported Facilities and Services. It shall be an unlawful service practice for any person to deny any individual the full and equal enjoyment of, or to impose different terms and conditions upon the availability of, any service, program or facility wholly or partially funded or otherwise supported by the City on the basis of such individual's relationship structure. This subsection shall not apply to any facility, service or program which does not receive any assistance from the City or which is not provided to the public generally.
 - b. Advertising. It shall be an unlawful service practice for any person to make, print, publish, advertise or disseminate in any way any notice, statement or advertisement with respect to any service or facility provided by either the City or an organization described in (A)(2a) of this section which expresses the City's or organizations intent to or practice of discriminating based on relationship structure or on any other prohibited basis.

B. Pretext. It shall be an unlawful discriminatory practice to do any of the acts mentioned in subdivisions (A)(1) through (A)(2) for any reason which would not have been asserted but for the relationship structure of any individual.

Section 13.31.070: Educational institutions.

A. Unlawful Educational Practices.

1. Admission. It shall be an unlawful educational practice for any person to deny admission, or to impose different and less favorable terms or conditions on admission, on the basis of an individual's relationship structure.
2. Services. It shall be an unlawful educational practice for any person to deny any individual the full and equal enjoyment of, or to impose different terms or conditions upon the availability of, any service or program offered by an educational institution on the basis of such individual's relationship structure.
3. Facilities. It shall be an unlawful educational practice for any person to deny any individual the full and equal enjoyment of, or to impose different and less favorable terms or conditions upon the access to any facility owned or operated by an educational institution on the basis of such individual's relationship structure.
4. Advertising. It shall be an unlawful educational practice for any person to make, print, publish, advertise or disseminate in any way any notice, statement or advertisement with respect to an educational institution which expresses the educational institution's intent to or practice of discriminating based on relationship structure or on any other prohibited basis.

B. Pretext. It shall be an unlawful discriminatory practice to do any of the acts mentioned in subdivisions (A)(1) through (A)(4) of this section for any reason which would not have been asserted but for the relationship structure of any individual.

C. Exception. It shall not be an unlawful discriminatory practice for a religious or denominational institution to limit admission, or give other preferences to applicants of the same religion.

Section 13.31.080: Liability.

Any person who violates any of the provisions of this chapter or who aids in the violation of any provisions of this chapter shall be liable for, and the court must award to the individual whose rights are violated, actual damages, costs, reasonable attorney's fees, and not less than two hundred dollars but not more than four hundred dollars in addition thereto. In addition, the court may award punitive damages in a proper case.

Section 13.31.090: Enforcement.

- A. Any aggrieved person may enforce the provisions of this chapter by means of a civil action.
- B. Any person who commits, or proposes to commit, an action in violation of this chapter may be enjoined therefrom by any court of competent jurisdiction.
- C. Action for injunction under this subsection may be brought by any aggrieved person, by the district attorney, or by any person or entity who has standing and who will fairly and adequately represent the interests of the protected class.

Section 13.31.100: Limitation on action.

Actions under this chapter must be filed within one year of the alleged discriminatory act(s).

