

PROPOSED DISCRIMINATION ORDINANCE

Background

San Antonio City Council is considering a proposal that will add “sexual orientation” and “gender identity” to the discrimination ordinances in the city code. This proposed ordinance covers individuals, businesses, religious organizations and places of public accommodation. It provides no exemptions for religious beliefs relating to homosexuality.

Problems with proposed ordinance

The ordinance as proposed violates the First Amendment rights to freedom of religion, freedom of speech and freedom of association. Additionally, it violates the rights granted by the Texas Religious Freedom Act and the Texas Constitution.

1) City has not met the burden required under the Texas Religious Freedom Act (Texas Civil Practice Remedies Code Sec. 110)

- As explained in greater detail below, this ordinance infringes on religious liberty. When religious liberties are at risk, the Texas Religious Freedom Act requires the city to prove that there is a compelling need for the law and that there is not a less intrusive way to address this perceived need.
- The city has not shown that there is a compelling need for the law. By passing this ordinance without first proving this compelling need, the city would violate the Texas Religious Freedom Act.
- Even if the city had proof of a compelling need for the ordinance, the ordinance is overly obtrusive on religious liberties. The city has not shown that this ordinance is the least intrusive means to address the perceived need.

2) Ordinance violates Texas and Federal Constitutions by creating a religious test for involvement in city government and contracts/subcontracts.

- Sec. 2.552 (b) of the proposed ordinance includes “words” against sexual orientation or gender identity as discriminatory acts. It allows City Council to prohibit those that speak their religious beliefs regarding homosexuality from serving on city boards.
- This violates First Amendment freedom of speech and freedom of religion.
- It also violates Art. 1 Sec. 4 Texas constitution prohibiting a religious test for involvement in city government.

- For example, if a person publically expresses their religious belief that homosexual behavior is a sin – even if this expression is at a church service - that person could be frozen out of involvement with city government.
- The ordinance requires all people and businesses with city contracts to comply with these policies relating to sexual orientation and gender identity regardless of their religious beliefs. Those that oppose these behaviors on religious grounds will be barred from obtaining city contracts. This prohibition discriminates against people of faith.

3) Ordinance provides no protection for businesses, religious organizations or nonprofits

- Businesses run by people of faith will be subject to criminal penalties if they refuse to provide services that conflict with their religious beliefs relating to homosexuality.
- The ordinance allows religious organizations, such as churches and faith-based nonprofits, to give preference in hiring decisions to people of their same faith. This so called “exemption” provides no protection for employment decisions based on the religious organization’s belief relating to homosexuality or gender identity.
- All businesses, religious organizations and nonprofits will be forced to allow people to use opposite-sex facilities (such as bathrooms and locker rooms) based upon their perceived gender identity. This affects the safety of the public regardless of religious belief. For example, if a man walks in to a women’s locker room claiming that he perceives himself as a female, that facility cannot stop him and if they attempt to do so, will face criminal penalties.

4) Ordinance tramples on constitutionally protected religious liberties. The ordinance contains no exemptions for people of faith exercising their religion in their speech and/or actions.

Consequently:

- When asked to provide services contrary to their religious beliefs, business owners and nonprofits will have to choose between violating their religious beliefs, facing criminal penalties and/or ceasing operations.
- Religious organizations who allow their facilities to be used by the community will be forced to cease this use or be subject to criminal penalties for refusing to allow the facilities to be used for purposes contrary to their religious beliefs.
- Individuals are silenced and cannot express their religious beliefs on homosexuality for fear of facing criminal penalties and being barred from future involvement in city government and/or contracts/subcontracts.