

★ **Roll Call Number**

Agenda Item Number

38

Date November 21, 2011

An Ordinance entitled, "AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, by amending Sections 62-1, 62-42, 62-71, 62-72, 62-101, 62-103, 62-104, 62-136-, 62-137, 62-166 and 62-169 and by adding and enacting new section 62-1.1, relating to adding gender identity as a protected class in the human rights chapter",

presented.

Moved by _____ that this ordinance be considered and given first vote for passage.

FORM APPROVED:

(First of three required readings)



Douglas P. Philip
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

MOTION CARRIED APPROVED

_____ Mayor

_____ City Clerk

CITY ATTORNEY

Jeffrey D. Lester

DEPUTY CITY ATTORNEYSMark Godwin
Lawrence R. McDowell
Kathleen Vanderpool**ASSISTANT CITY ATTORNEYS**Angela T. Althoff
Roger K. Brown
Ann M. DiDonato
David A. Ferree
Glenna K. Frank
Gary D. Goudelock, Jr.Michael F. Kelley
Vicky L. Long Hill
Steven C. Lussier
Katharine J. Massier
Carol J. Moser
Douglas P. Philip**Attorney/Client Communication**

November 21, 2011

**HONORABLE MAYOR AND MEMBERS
OF THE DES MOINES CITY COUNCIL**

Re: Human Rights Ordinance Amendment
Item No. 38 on the November 21, 2011 agenda.

This item is to amend the City Code Chapter 62 to add "gender identity" as a protected class to the human rights ordinance. There is no fiscal impact resulting from these changes.

The August 29, 2011 council agenda (Item #54, roll call #11-1487) contained a communication for the Des Moines Human Rights Commission requesting the city council to amend the Des Moines Municipal Code by adding "gender identity" as a protected class to conform to Iowa Code Chapter 216. The state code has had "gender identity" as a protected class since 2006. See attached communication. Councilmember Coleman moved to receive, file and refer to the legal department for preparation of proper legislation. Motion carried 6-1.

The proposed ordinance language includes the same definition as the state code for "gender identity." The amendment to include "gender identity" as a protected class is now presented to you for first reading.

Sincerely,

Douglas P. Philip
Assistant City Attorney

Attachment



RECEIVED
AUG 23 2011
CITY MANAGER'S OFFICE

August 23, 2011

Commissioners

Stuart Juarez, D. Min, Chair
David Drake, DO, Vice Chair
Som Baccam, Secretary
James Bowman, Ed. D
Michael Bowser
Chad Little
Andrew Tice

Staff

Rudolph Simms, Jr. Director
Vern M. Ostrander, Sr. HRS
Mikel J. Johnson, M.S., HRS

Address

602 Robert D. Ray Drive
Des Moines, Iowa 50309
Ph. 515-283-4284
Fax: 515-237-1408
E-mail:
rusimms@dmgov.org

Dear Mayor and Council Members,

At the August 11th Human Rights Commission meeting the Commissioners passed a recommendation to the City Council to add gender identity to the protected classes in the City Ordinance. This action will put the City of Des Moines in alignment with the Iowa Civil Rights Act. The State has had gender identity as a protected class since 2006.

A letter from the Iowa Attorney General at the time firmly stated that cities should pass their own amendment to include gender identity in their jurisdiction. A letter referencing this is attached.

The wording that the Commission approved 4-1 is from the August 11th Minutes:

Bowser moved that, "we (Human Rights Commission) request the city council amend the city of Des Moines Human Rights ordinance to be in compliance with Chapter 216 of the Code of Iowa by adding gender identity as a protected class. I further move that we file a copy of the Attorney General's opinion on this matter to the city council." Commissioner Som Baccam seconds the motion. Motion passed 4-1".

On behalf of the Des Moines Human Rights Commission, I thank you for your consideration of this request as it is in keeping compliant with the Iowa State Law and it is just as exemplary to our being an "All American City".

Sincerely,

A handwritten signature in black ink that reads "Rudy Simms". The signature is written in a cursive, flowing style.

Rudy Simms



THOMAS J. MILLER
ATTORNEY GENERAL

Department of Justice

ADDRESS REPLY TO:
HOOVER BUILDING
DES MOINES, IOWA 50319
TELEPHONE: 515/281-5164
FACSIMILE: 515/281-4209

October 24, 2007

Mr. Ralph Rosenberg, Executive Director
Iowa Civil Rights Commission
Grimes State Office Building
400 E. 14th Street
Des Moines, Iowa 50319-1004

Dear Executive Director Rosenberg:

Our office is in receipt of your request for an opinion of the Attorney General concerning the enforcement of civil rights statutes following enactment of Senate File 427. Senate File 427 amended Iowa Code Chapter 216 to extend civil rights protections to persons based on sexual orientation and gender identity. The amendments to Chapter 216 became effective on July 1, 2007. See Iowa Code § 3.7(1) (2007). You state that several municipalities already extend civil rights protections to persons based on sexual orientation and gender identity. You also state that the Iowa Civil Rights Commission contracts with some local commissions to assist in the processing of discrimination complaints. In light of the recent amendments to Chapter 216, you ask whether local human and civil rights commissions can enforce the new civil rights protections based on sexual orientation and gender identity without amending local ordinances, or whether local human and civil rights commissions should amend local ordinances to bring local laws into compliance with the state statutes. Because we believe your questions can be answered based on existing statutes and case law, we are responding by this letter of informal advice.

Amendments to Iowa Code Chapter 216

Senate File 427 amended Chapter 216 to add sexual orientation and gender identity to statutes that address discrimination in many different contexts. In employment, sexual orientation and gender identity are prohibited grounds to refuse to hire, refer, discharge or otherwise discriminate in employment; or to refuse to admit to membership or otherwise discriminating in membership privileges, rights, or benefits; or to advertise or in any other manner indicate or publicize that individuals . . . are unwelcome, objectionable, not acceptable, or not solicited for employment or membership unless based on the nature of

the occupation. Iowa Code § 216.6(1)(a)-(c) (2007), as amended by Senate File 427, 82nd G.A. 1st Sess., § 3 (Iowa 2007). These provisions do not apply to any bona fide religious institution or its educational facility, association, corporation, or society, but only if sexual orientation or gender identity are related to a bona fide religious purpose. Iowa Code § 216.6(6)(d), as amended by Senate File 427, 82nd G.A. 1st Sess., § 4 (Iowa 2007). Religious institutions have similar exceptions from the anti-discrimination laws in public accommodations and housing. Iowa Code §§ 216.7(2)(a), 216.12(1), as amended by Senate File 427, 82nd G.A. 1st Sess., §§ 6, 14 (Iowa 2007).

Senate File 427 amended statutes in Chapter 216 governing discrimination in public accommodations. When providing a public accommodation, sexual orientation and gender identity cannot be used to refuse, deny or otherwise discriminate in furnishing accommodations, advantages, facilities, services, or privileges. Iowa Code § 216.7(1)(a) (2007), as amended by Senate File 427, 82nd G.A. 1st Sess., § 5 (Iowa 2007). When advertising or publicizing a public accommodation, sexual orientation and gender identity cannot be used as a ground on which patronage is unwelcome, objectionable, not acceptable or not solicited. Iowa Code § 216.7(1)(b) (2007), as amended by Senate File 427, 82nd G.A. 1st Sess., § 5 (Iowa 2007).

Senate File 427 also amended statutes in Chapter 216 governing discrimination in housing. Sexual orientation and gender identity cannot be grounds to refuse to sell, rent, lease, assign, sublease, refuse to negotiate, or to otherwise make unavailable, or deny any real property or housing accommodation or to discriminate in the terms, conditions, or privileges of the transaction or in the provision of services or facilities in connection with the real property or housing accommodation. Additionally, when advertising or in any other manner indicating or publicizing these transactions, sexual orientation and gender identity cannot be grounds on which persons are unwelcome, objectionable, not acceptable, or not solicited. Similarly, discrimination on these grounds is prohibited because persons "may from time to time be present in or on the . . . premises for lawful purposes at the invitation of the lessee or owner as friends, guests, visitors, relatives, or in any similar capacity." Iowa Code § 216.8(1)-(4) (2007), as amended by Senate File 427, 82nd G.A. 1st Sess., § 7 (Iowa 2007). Additional prohibitions extend to representations in real estate transactions. Iowa Code § 216.8A(1)-(5) (2007), as amended by Senate File 427, 82nd G.A. 1st Sess., § 8-10 (Iowa 2007).

Finally, Senate File 427 extends these prohibitions to educational institutions and persons engaged in certain credit practices. Iowa Code § 216.9-10 (2007), as amended by Senate File 427, 82nd G.A. 1st Sess., §§ 11-13 (Iowa 2007).

Local Laws and Ordinances

The extensive amendments to the state statutes impact the local enforcement of civil rights laws. Chapter 216 expressly contemplates local enforcement of the Iowa civil rights statutes. Section 216.19 states:

Nothing in this chapter shall be construed as indicating an intent on the part of the general assembly to occupy the field in which this chapter operates to the exclusion of local laws not inconsistent with this chapter that deal with the same subject matter.

Further:

Nothing in this chapter shall be construed as indicating an intent to prohibit an agency or commission of local government having as its purpose the investigation and resolution of violations of this chapter from developing procedures and remedies necessary to insure the protection of rights secured by this chapter. *All cities shall, to the extent possible, protect the rights of the citizens of this state secured by the Iowa civil rights Act.* Nothing in this chapter shall be construed as limiting a city or local government from enacting any ordinance or other law which prohibits broader or different categories of unfair or discriminatory practices.

Iowa Code § 216.19 (2007) (emphasis added).

This statutory language makes clear that Iowa Code Chapter 216 does not preempt a “city or local government” from enacting local laws or ordinances that prohibit unfair or discriminatory practices. 1982 Op. Atty. Gen. 88 (“A city is within its authority to enact a local ordinance which expands the protections granted its citizens under the state statute, as long as the ordinance is not irreconcilable with either the procedural mechanism or substantive rights provided by Chapter 601A”). See Goodell v. Humboldt County, 575 N.W.2d 486 (Iowa 1998). Compare Worth County Friends of Agriculture v. Worth County, 688 N.W.2d 257 (Iowa 2004).

If local laws or ordinances are enacted, Chapter 216 directs that “[a]ll cities shall, to the extent possible, protect the rights of the citizens of this state secured by the Iowa

civil rights Act.” Consistent with the language of section 216.19, local laws or ordinances may prohibit discrimination on additional grounds that are “broader” or “different” from Chapter 216, but “shall . . . protect the rights of the citizens of this state” that are “secured” by Chapter 216. Ordinarily, the use of the term “shall” indicates a mandatory intent. State v. Lockett, 387 N.W.2d 298 (Iowa 1986). This statutory language directs cities that enact ordinances to protect the rights of citizens to the extent of the protections now afforded by Chapter 216. Cities that enact ordinances, therefore, may protect citizens on additional grounds that are “broader” or “different” from those in Chapter 216, but they must protect citizens on the grounds that are contained in Chapter 216.

Generally, “[w]hen the text of a statute is plain and its meaning clear” courts “apply the language of the statute as written and will not search for meaning beyond express terms of the statute or resort to rules of statutory construction.” University of Iowa Hospitals and Clinics v. Waters, 705 N.W.2d 507 (Iowa App. 2005). Applying this principle, with the enactment of Senate File 427 the rights of citizens of this state secured by the Iowa Civil Rights Act plainly expanded to include sexual orientation and gender identity. Accordingly, Chapter 216 now directs cities to protect the rights of the citizens of this state based on sexual orientation and gender identity.¹

Local Enforcement of Chapter 216

Cities have enforcement options when protecting the rights of citizens. The Iowa Supreme Court has recognized the power of a local human rights commission to enforce Chapter 216 directly. In Gray v. Kinseth Corp., 636 N.W.2d 100 (Iowa 2001), the Court considered whether a right-to-sue letter issued by the Iowa Civil Rights Commission controlled in calculating the 90-day period within which a former employee was required to commence legal action. Both the state and local commission had issued right-to-sue letters approximately one month apart. The 90-day period after issuance of the *local letter* had expired before suit was filed; however, the 90-day period after issuance of the *state letter* had not expired before suit was filed. Relying on language in section 216.19,

¹ The failure to conform local ordinances to the state statute may have additional consequences. The Iowa Civil Rights Commission is authorized to designate an unfunded local agency or commission as a “referral agency.” A local agency or commission *shall not* be designated a referral agency unless the ordinance creating it “provides the same rights and remedies” as provided in Chapter 216. Iowa Code § 216.19 (2007).

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Mr. Ralph Rosenberg, Executive Director
Iowa Civil Rights Commission
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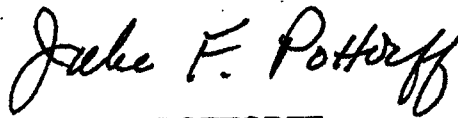
the Court observed that "local commissions have jurisdiction to enforce the Iowa Civil Rights Act as well as local ordinances." Id. at 102-03. Although this case focuses on procedural confusion over the processing of a complaint at the state and local level, it seems clear the Court considered the local commission to be authorized to enforce Chapter 216 directly. See, generally, Van Meter Industrial v. Mason City Human Rights Comm'n., 675 N.W.2d 503, 516 (Iowa 2004) ("[T]he Commission in this case acted under the authority and subject to the limitations of chapter 216. . .").

Conclusions

The authorization for local governments to enact local laws and ordinances and the statutory directive to "protect the rights of the citizens of this state secured by the Iowa civil rights Act" make clear that cities should amend existing ordinances to reflect the recent legislative amendments to Chapter 216. We find nothing in Chapter 216 that suggests cities may ignore these statutory amendments and maintain local laws and ordinances that provide less protection to their citizens than the protection that is now extended under state law. Relying on the Kinseth decision, cities may opt to enforce the state civil rights statutes directly. Direct enforcement of Chapter 216 does not relieve cities of the obligation to conform ordinances to the civil rights protections now extended to the citizens of Iowa under state law.

I hope our advice is helpful to you and to the Iowa Civil Rights Commission as you work with local governments to protect the civil rights of the citizens of Iowa.

Sincerely,



JULIE F. POTTORFF
Deputy Attorney General

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38

ORDINANCE NO. _____

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, by amending Sections 62-1, 62-42, 62-71, 62-72, 62-101, 62-103, 62-104, 62-136-, 62-137, 62-166 and 62-169 and by adding and enacting new section 62-1.1, relating to adding gender identity as a protected class in the human rights chapter.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, is hereby amended by amending Sections 62-1, 62-42, 62-71, 62-72, 62-101, 62-103, 62-104, 62-136-, 62-137, 62-166 and 62-169 and by adding and enacting new section 62-1.1, relating to adding gender identity as a protected class in the human rights chapter, as follows:

Sec. 62-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Discriminate, discrimination, or discriminatory means any significant and unreasonable difference in treatment because of age, race, religion, creed, color, sex, sexual orientation, gender identity, national origin, ancestry, disability or familial status and includes any and all of the illegal discriminatory practices enumerated in this chapter. This term shall also mean to separate, to segregate, or to make a distinction against any persons, because of age, race, religion, creed, color, sex, sexual orientation, gender identity, national origin, ancestry, disability or familial status. This term shall also include any significant and unreasonable difference in treatment because of a person's association with another of a different age, race, religion, creed, color, sex, sexual orientation, gender identity, national origin, ancestry, disability or familial status. This term also means any additional protected class or classes as are identified and/or defined by Iowa Code Chapter 216.

Gender identity means a gender-related identity of a person, regardless of the person's assigned sex at birth.

Sec. 62-1.1. State Code protected classes adopted.

- (a) The protected classes in section 62-42 of this chapter include all protected classes as are identified and/or defined by Iowa Code Chapter 216.
- (b) The protected classes in section 62-71 and 62-166 of this chapter include all protected classes as are identified and/or defined by Iowa Code section 216.6.
- (c) The protected classes in sections 62-101 and 62-103 of this chapter include the protected classes as are identified and/or defined by Iowa Code sections 216.8 and 216.12 applied respectively.
- (d) The protected classes in sections 62-136 and 62-137 of this Chapter include the protected classes as are identified and/or defined by Iowa Code sections 216.7(1) and 217.7(2) applied respectively.
- (e) The protected classes in section 62-104 of this chapter include the protected classes as are identified and/or defined by Iowa Code section 216.8
- (f) The protected classes in section 62-169 of this chapter include the protected classes as are identified and/or defined by Iowa Code Chapter 216 except age and familial status.

Sec. 62-42. Powers and duties of commission and director.

- (a) The human rights commission shall have the power and duty to:
 - (1) Initiate, receive, hear, and investigate complaints of discrimination by or against any person or group and to make a report to the city council of any violations of this chapter and of any illegal discrimination found to exist and issue orders to remedy such discrimination.
 - (2) Seek to conciliate complaints.
 - (3) Direct the attorney for the commission to petition the district court to seek a subpoena for books, papers, records and any other material evidence necessary to the

investigation and hearings of any complaint filed pursuant to this chapter.

- (4) Hold hearings upon any complaint filed against any respondent pursuant to section 62-2 of this chapter; demand witnesses and compel their attendance, and compel respondents to produce for examination any books, papers, and materials relating to any matters material to the subject of the complaint; and administer oaths and take the testimony of any person under oath. Such hearings may be held by the commission itself or by duly appointed hearing officers. There shall be issued findings of fact, recommendations and orders. If a witness either fails or refuses to obey a demand issued by the commission, the commission may petition the district court having jurisdiction for issuance of a subpoena, and the court shall in a proper case issue the subpoena.
- (5) From time to time, but not less than once a year, render to the city council a written report of its activities and recommendations; hold regular meetings as otherwise required by this Code, including an annual meeting in September of each year at which officers shall be elected, the executive director's performance shall be evaluated, and the commission's annual report to the city council, if not already filed, shall be approved and forwarded to the city clerk for receipt and filing by the city council; hold a joint meeting with the city council at least once each year.
- (6) Formulate and carry out a comprehensive educational program designed to prevent and eliminate discrimination because of age, race, religion, creed, color, sex, sexual orientation, gender identity, national origin, ancestry, disability or familial status, including the provision of training and educational services to businesses, professional groups, and educational agencies requesting workshops, seminars, or speakers to address specific issues and concerns within the purview of this chapter, as well as maintaining as a part of the commission's formal educational program a series of public forums addressing upon a rotating basis the various matters within this chapter about which there is the need to increase public awareness and response. The commission shall prepare and distribute a brochure explaining its mission, purpose, and procedures for dissemination within the city and shall publish and distribute a quarterly newsletter of its activities and concerns. The commission's educational and training efforts shall be undertaken in cooperation with any private, quasi-public,

or public organization, agency, or association offering its support to such endeavor by providing staff to be trained to assist in the workshops and seminars sponsored by the commission, by providing clerical support services or professional expertise in the preparation and release of the brochure and newsletter, or providing financial support for the commission's educational and training program.

- (7) Adopt such rules and regulations as may be necessary to govern, expedite, and effectuate this chapter and keep a record of its activities and minutes of its meetings.
- (8) Investigate and study housing patterns and group relationships within the city and the extent of discrimination, prejudice and segregation in public accommodations, employment, apprenticeship programs, on-the-job training programs, housing and public, private, and vocational schools because of age, sex, sexual orientation, gender identity, race, religion, creed, color, national origin, ancestry, disability or familial status and the effect of such discrimination, and segregation in public accommodations, employment, apprenticeship programs, on-the-job training programs, housing patterns and public, private and vocational schools; and advise and cooperate with the mayor, the board and officials with relation to any such problems. The commission shall from time to time make recommendations to the mayor, the city council, the city manager, agencies, and officials, for the betterment of housing patterns and intergroup relationships within the community.
- (9) Devise and recommend to the mayor and city council ways and means of discouraging and combating prejudice, intolerance, and bigotry in all groups and in their relations with one another.
- (10) Discover all practices and policies calculated to create conflicts and tensions and recommend ways and means for their elimination.
- (11) Report and recommend means of eliminating any unfair or unjust discrimination against any person or group which would be deemed detrimental to the best interests of the community.
- (12) Enlist the cooperation of all racial, religious, educational, community, civic, business, fraternal, and benevolent associations and all other groups,

associations and societies and all constructive community forces and talents that might be helpful to it in discharging its duties.

- (13) Cooperate with federal, state, and city agencies, citizens, citizen organizations, the board of education, and parochial and private schools in formulating and developing courses of education to accomplish the objectives of this chapter.
- (14) Initiate and conduct voluntary surveys; assemble pertinent data, confer with groups and hold hearings; and expedite the work of the commission by making investigations and surveys through subcommittees.
- (15) Endeavor by persuasion and education to induce public and private owners, lay and professional organizations of the housing industry, contractors, and lending institutions to institute nondiscriminatory practices in the procurement and financing of housing accommodations, according to one's ability to pay, without regard to age, race, religion, creed, color, sex, sexual orientation, gender identity, national origin, ancestry, disability or familial status.
- (16) Assist in creating advisory agencies which will aid in effectuating the purposes of this chapter, which may be authorized to study the problem of discrimination in all or specific fields or instances of discrimination because of age, race, religion, creed, color, sex, sexual orientation, gender identity, national origin, ancestry, disability or familial status and which may be authorized to foster, through community effort or otherwise, good will, cooperation and conciliation among the groups and elements of the population of this city and make recommendations to the commission for the development of rules and procedures, and for the programs of formal and informal education, which the commission may recommend to the appropriate local agency. Advisory agencies shall be composed of representative citizens serving without pay. The commission may itself make the studies and perform the acts authorized by this subsection. The commission may, by voluntary conference with parties in interest, endeavor by conciliation and persuasion to eliminate discrimination in all the stated fields and to foster good will and cooperation among all elements of the population of this city.
- (17) Act as a deferral agency of the Iowa civil rights commission, the equal employment opportunity commission

and of other regulatory governmental agencies deemed appropriate; receive such complaints as the state commission may refer; investigate and process them in the same manner as a complaint originally filed with the city commission; and report its investigative results, findings, conclusions, recommendations and orders to the state commission or other agency.

(18) Apply for and maintain referral agency status with the Iowa civil rights commission as set out in I.C. § 216.1 et seq., and the administrative rules promulgated pursuant to such chapter in the Iowa Administrative Code; correct any deficiencies which prevent the referral status being granted, including seeking any necessary city council action; and negotiate and present for city council approval and consent a referral contract with the Iowa civil rights commission, including a provision that charges involving city staff as complainants or respondents, or otherwise aggrieved parties or alleged perpetrators, may be referred to and may be accepted by the Iowa civil rights commission for investigation and determination.

(19) Any of the powers and duties described above may be delegated to the executive director.

(b) The executive director shall exercise the following powers and duties:

(1) Perform such duties as the Commission may direct or delegate.

(2) Assist the commission in exercising its powers and performing its duties as set out in this chapter.

(3) Supervise and manage the staff of the commission.

(4) Report to the commission at each monthly meeting the activities and performance of duties of the executive director and commission staff. Copies of this report shall be submitted to the mayor and city manager.

(5) Develop a plan and procedure to prevent any case being on file with the commission for more than 120 days without having been preliminarily screened for probable cause.

(6) Design and implement an orientation and ongoing training program for all staff and commissioners with emphasis on the commission's mandate, mission, and importance of each commissioner's participation and attendance.

- (7) Perform any and all responsibilities set out in this chapter to be performed by the executive director.
- (8) Perform any and all other tasks and duties which the commission deems necessary or appropriate to effectuate the purposes of this chapter.
- (9) Prepare and submit for commission comment and approval the annual comprehensive report of the commission's activities and recommendations to the city council pursuant to this chapter.
- (10) Act as the legislative liaison for the commission for all matters within the purview of this chapter.
- (11) Actively seek grants and other types of funding consistent with the commission's mission for presentation to and consideration of the commission.

Sec. 62-71. Enumerated.

It shall be an illegal discriminatory employment practice for:

- (1) An employer to fail or to refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to such individual's compensation, terms, conditions or privileges of employment, or to limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect such individual's status as an employee, because of such individual's age, race, religion, creed, color, sex, sexual orientation, gender identity, national origin, ancestry or disability. Sexual harassment is a prohibited discriminatory practice.
- (2) A labor organization or the employees, agents, or members thereof to refuse to admit to membership any applicant; to expel any member; to limit, segregate, or classify its membership or applicants for membership; or to classify or fail or refuse to refer for employment any individual in any way which would adversely affect such individual's status as an employee or as an applicant for employment or to otherwise discriminate against any applicant for membership or any member in the privileges, rights or the benefits of such membership because of age, race, religion, creed, color, sex, sexual orientation, gender identity, national origin, ancestry or disability or to

discriminate against any employer or any person employed by an employer because of age, race, religion, creed, color, sex, sexual orientation, national origin, ancestry or disability.

- (3) An employer, employment agency, labor organization or the employees, agents or members thereof to directly or indirectly print or circulate or cause to be printed or circulated any advertisement, statement, or publication or to use any form of application for employment or membership or to make any inquiry in connection with prospective employment or membership which expresses, directly or indirectly, any limitation, specification, or discrimination as to age, race, religion, creed, color, sex, sexual orientation, gender identity, national origin, ancestry or disability.
- (4) Any employer, employment agency, labor organization or employees, agents or members thereof to discriminate in hiring, classifying, procuring, recruiting, referring, or placing persons for employment because of age, race, religion, creed, color, sex, sexual orientation, gender identity, national origin, ancestry or disability.
- (5) An employer, labor organization, employment agency, or employees, agents or members thereof to discharge, expel, harass, or otherwise discriminate against any person because such person has opposed any practice forbidden under this chapter or has filed a complaint, testified or assisted in any proceeding under this chapter.
- (6) Any person to aid, abet, incite, compel or coerce the doing of any of the practices declared illegal or discriminatory by this chapter.

Sec. 62-72. Exemptions.

Nothing in this article shall be construed to apply to the following:

- (1) The employment of individuals to render personal service to the person or the employer or members of the employer's family.
- (2) Any employer who regularly employs fewer than four individuals. For purposes of this chapter, individuals who are members of the employer's family shall not be counted as employees.

- (3) The employment of individuals for work within the home of the employer if the employer or members of the employer's family reside therein during such employment.
- (4) Any bona fide religious institution with respect to any qualifications for employment based on religion, ~~or~~ sexual orientation, or gender identity when such qualifications are related to a bona fide religious purpose.

Sec. 62-101. Enumeration of illegal practices.

- (a) It shall be an illegal discriminatory housing practice for any person, owner, or person acting for an owner, of rights to dwelling with or without compensation, including but not limited to persons licensed as real estate brokers or salespersons, attorneys, auctioneers, appraisers, agents or representatives by power of attorney or appointment, or any person acting under court order, deed of trust, or will to:
 - (1) Refuse to sell, lease or rent after making of a bona fide offer; refuse to show or represent that a dwelling is unavailable; or refuse to negotiate for the sale, lease or rental of any dwelling or refuse to sublease or assign or otherwise make unavailable or deny a dwelling to any person because of race, religion, creed, color, sex, sexual orientation, gender identity, national origin, ancestry, disability or familial status.
 - (2) Directly or indirectly advertise or in any other manner indicate or publicize that the purchase, rental, lease, assignment, or sublease of any dwelling or any part, portion or interest therein, by persons of any particular race, color, sex, sexual orientation, gender identity, creed, religion or national origin, ancestry, disability, or familial status, is unwelcome, objectionable, not acceptable, or not solicited.
 - (3) Include in the terms, conditions or privileges of any sale, lease, sublease, rental, assignment or other transfer of any dwelling, any clause, condition or restriction discriminating against any person in the use or occupancy of the dwelling because of race, religion, creed, color, sex, sexual orientation, gender identity, national origin, ancestry, disability or familial status.
 - (4) Discriminate in the furnishing of any facilities or services for any dwelling because of race, religion, creed, color, sex, sexual orientation, gender identity, national origin, ancestry, disability or familial status.

- (5) Make, utter, print, publish or circulate or cause to be made, printed, uttered, published or circulated any notice, statement or advertisement; announce a policy; use any form of application with respect to the sale, purchase, lease, rental or financing of dwelling; or make any record or inquiry in connection with the prospective purchase, rental or lease of a dwelling which either records the race, religion, creed, color, sex, sexual orientation, national origin, ancestry, disability or familial status of applicants or indicates directly or indirectly any preference, limitation, specification or discrimination on the basis of race, religion, creed, color, sex, sexual orientation, gender identity, national origin, ancestry, disability or familial status or an intention to make any such preference, limitation, specification or discrimination.
- (6) Discriminate against any other person because the latter has opposed any practice forbidden under this chapter or has filed a complaint, testified, or assisted in a proceeding under this chapter.
- (7) Coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this chapter.
- (8) Aid, incite, compel, coerce, or participate in the doing of any act declared to be a discriminatory housing practice under this section; attempt, directly or indirectly, to commit any act declared by this section to be a discriminatory practice; or attempt in any fashion to coerce, intimidate, compel, threaten, interfere, or in any other fashion force any person not to cooperate or participate in any hearing or other proceeding conducted by the human rights commission or its staff.
- (9) For profit, induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person of a particular race, sex, sexual orientation, gender identity, color, religion, ancestry, national origin, disability or familial status.
- (10) Steer or channel a prospective buyer into or away from an area because of race, sex, sexual orientation, gender identity, religion, national origin, ancestry, color,

disability, or familial status, by action by a real estate broker or salesperson which is intended to influence the choice of a prospective dwelling buyer on the basis of racial, religious, national origin, sex, sexual orientation, color, disability, ancestry or familial status.

- (11) Deny another person access to or membership or participation in a multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings or discriminate against a person in terms or conditions of access, membership, or participation in such organization because of race, color, creed, sex, sexual orientation, gender identity, religion, national origin, disability, or familial status.
- (b) As used in this subsection, the term "residential real-estate-related transaction" means any of the following: (i) the making or purchasing of loans, accepting mortgages or providing other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling or secured by residential real estate; (ii) the selling, brokering, or appraising of residential real property. It shall be an illegal discriminatory housing practice for any person, owner or person acting for an owner, of rights to dwelling, with or without compensation, including but not limited to persons licensed as real estate brokers, salespersons or entities whose business includes engaging in residential real-estate-related transactions to discriminate against any person in making available such a transaction or in the terms or conditions of such a transaction, because of race, color, religion, sex, sexual orientation, gender identity, ancestry, disability, familial status, or national origin to discriminate in rates, terms, conditions or provisions of any such financial assistance or in the extension of services in connection therewith because of race, religion, creed, color, sex, sexual orientation, gender identity, national origin, ancestry, disability or familial status of the applicant for such loan or funds or of the would-be-purchaser or lessee or prospective occupant of dwelling or of the racial makeup of the neighborhood in which the property is located. Nothing in this subsection prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, creed, national origin, ancestry, sex, sexual orientation, gender identity, disability or familial status.

Sec. 62-103. Exemptions.

- (a) Nothing in sections 62-101 and 62-102 of this article shall be construed to apply to the following:
- (1) The rental or leasing of a dwelling in a building which contains dwellings for not more than two families living independently of each other, if the owner resides in one of such dwellings.
 - (2) Any bona fide religious institution with respect to any qualifications it may impose based on religion, ~~or~~ sexual orientation, or gender identity when such qualifications are related to a bona fide religious purpose, unless the religious institution owns or operates property for a commercial purpose or membership in the religion is restricted on account of race, color or national origin.
 - (3) The rental or leasing of less than four rooms within a single dwelling by the occupant or owner of such dwelling, if the occupant or owner resides in the dwelling.
 - (4) The rental or leasing of a dwelling within which residents of both sexes must share a common bathroom facility on the same floor of the building. This exemption does not apply to race, color, creed, religion, sexual orientation, gender identity, national origin, ancestry, disability or familial status basis.
 - (5) The rental or leasing of a dwelling in a building which contains dwellings for not more than four families living independently of each other, if the owner resides in one of the dwellings for which the owner qualifies for the homestead tax credit under I.C. § 425.1.
- (b) Nothing in sections 62-101 and 62-102 of this article regarding familial status shall apply with respect to housing for older persons. As used in this subsection, the term "housing for older persons" means housing:
- (1) Provided under any state or federal program that is specifically designed and operated to assist elderly persons, as defined in the state or federal program, that the human rights commission determines to be consistent with determinations made by the Secretary of Housing and Urban Development;
 - (2) Intended for and solely occupied by persons 62 years of age or older; or

(3) For 80-percent occupancy by at least one person 55 years of age or older per unit, and providing significant facilities and services specifically designed to meet the physical or social needs of the persons, and the housing facility must publish and adhere to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

(c) None of the exemptions stated in subsections (a) and (b) of this section shall apply to advertising.

Sec. 62-104. Threat of force or intimidation; penalty.

(a) A person commits a public offense if the person, whether or not acting under color of law, by force or threat of force, intentionally intimidates or interferes with or attempts to interfere with a person under any of the following circumstances:

(1) Because of the person's race, color, creed, sex, sexual orientation, gender identity, religion, national origin, disability, or familial status, and because the person is or has been selling, purchasing, renting, occupying, or financing, contracting for, or negotiating for the sale, purchase, rental or occupation of any dwelling, or applying for or participating in a service, organization, or facility relating to the business of selling or renting dwellings.

(2) Because the person is or has been doing any of the following:

a. Participating, without discrimination because of race, color, creed, sex, sexual orientation, gender identity, religion, national origin, disability, or familial status, in an activity service, organization, or facility described in subsection (a)(1) of this section.

b. Affording another person the opportunity or protection to so participate.

c. Lawfully aiding or encouraging other persons to participate, without discrimination because of race, color, sex, sexual orientation, gender identity, religion, national origin, disability, or familial status, in an activity, service,

organization, or facility described in subsection (a)(1) of this section.

- (b) Any person who fails to perform an act required by this section or who commits an act prohibited by this section shall be guilty of a misdemeanor punishable by fine or imprisonment as provided by section 1-15 of this Code.

Sec. 62-136. Enumerated.

It shall be an illegal discriminatory public accommodations practice for any person, owner, lessor, lessee, sublessee, proprietor, manager, superintendent, agent, or employee of any place of public accommodation to:

- (1) Refuse or deny to any person because of race, religion, creed, color, sex, sexual orientation, gender identity, national origin, ancestry or disability the accommodations, advantages, facilities, goods, services, or privileges thereof or otherwise discriminate, separate, segregate or make a distinction against any person because of race, religion, creed, color, sex, sexual orientation, gender identity, national origin, ancestry or disability in the furnishing of such accommodations, advantages, facilities, goods, services or privileges.
- (2) Directly or indirectly print or circulate or cause to be printed or circulated any advertisement, statement, publication or use any form of application for entrance and membership which expresses, directly or indirectly, any limitation, specification or discrimination as to race, religion, creed, color, sex, sexual orientation, gender identity, national origin, ancestry or disability or indicate or publicize that the patronage of persons of any particular race, religion, creed, color, sex, sexual orientation, gender identity, national origin, ancestry or disability is unwelcome, objectionable, not acceptable, or not solicited.
- (3) Discriminate against any other person because such person has opposed any practice forbidden under this chapter or has filed a complaint, testified or assisted in any proceeding under this chapter.
- (4) Aid, incite, compel, coerce, or participate in the doing of any act declared to be a discriminatory accommodations practice under this section, or attempt, directly or indirectly, to commit any act declared by this section to be a discriminatory practice.

Sec. 62-137. Exemptions.

Nothing in this article shall be construed to apply to the following:

- (1) Any bona fide religious institution with respect to any qualifications the institutions may impose based on religion, ~~or~~ sexual orientation, or gender identity, when such qualifications are related to a bona fide religious purpose.
- (2) The rental or leasing to transient individuals of fewer than six rooms within a single housing accommodation by the occupant or owner of such housing accommodation if the occupant or owner or members of the occupant's or owner's family reside therein.
- (3) Restrictions based on sex on the rental or leasing of housing accommodations by nonprofit corporations.
- (4) Restrictions based on sex on the rental or leasing of housing accommodations which the owner can show were operated for the purpose of providing housing for persons of any one sex prior to January 21, 1972.

Sec. 62-166. Illegal practices.

It shall be an illegal discriminatory municipal practice for the city or any employee, official, agent or representative of the city to refuse or deny to any person, because of age, race, religion, creed, color, sex, sexual orientation, gender identity, national origin, ancestry or disability, the services, advantages, facilities or privileges offered by the city or otherwise to discriminate, separate, segregate, or make a distinction against any person, because of age, race, religion, creed, color, sex, sexual orientation, gender identity, national origin, ancestry or disability, in the furnishing of such services, advantages, facilities or privileges.

Sec. 62-169. Nondiscrimination in urban renewal projects.

Nondiscrimination clauses shall be included in all leases and contracts which the city proposes to enter into with respect to the lease, sublease, transfer, use, occupancy, tenure, or enjoyment of any land in an urban renewal project, in substantially the following form:

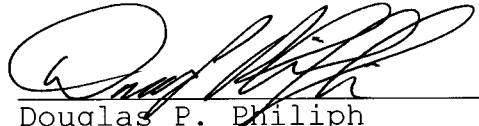
- (1) *Leases.* The lessee herein covenants by and for the lessee and the lessee's heirs, executors, administrators and

assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons on account of race, religion, creed, color, sex, sexual orientation, gender identity, national origin, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased, nor shall the lessee or any person claiming under or through the lessee establish or permit any such practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the premises herein leased.

- (2) *Contracts.* In contracts relating to the sale, transfer, or leasing of land, or any interest therein acquired by the city, within any urban renewal area or project, the provisions in subsection (1) of this section in substantially the forms set forth shall be included, and such contracts shall further provide that such provisions shall be binding upon and shall obligate the contracting party and any subcontracting party or other transferees under such instrument.

Section 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:



Douglas P. Philip
Assistant City Attorney