



The City of Traverse City

Communication to the City Commission

FOR THE CITY COMMISSION MEETING OF SEPTEMBER 7, 2010

DATE: SEPTEMBER 2, 2010

FROM: R. BEN BIFOSS, CITY MANAGER

SUBJECT: NON-DISCRIMINATION ORDINANCE

Attached is a memo from Kelli Springer, Human Resources Specialist, and Ex-Officio member of the Human Rights Commission, highlighting the revisions made to the proposed ordinance as a result of the City Commission's August 9 study session.

The recommended motion schedules this ordinance amendment for possible enactment on October 4 instead of September 20 because under the typical schedule, City Charter requires 14 days between introduction and enactment.

I recommend the following motion:

that an amendment to the Traverse City Code of Ordinances, *Non-Discrimination Ordinance*, Chapter 605, which would prohibit discrimination in the areas of employment, housing, public accommodations and other practices, as defined within the ordinance, as recommended by the Human Rights Commission, be introduced and scheduled for possible enactment on October 4, 2010.

rbb/bcm


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e-copy: Kelli Springer, Human Rights Commission Ex-Officio; and Human Resources Specialist

Memorandum

The City of Traverse City



TO: R. Ben Bifoss, City Manager
FROM: Kelli Springer, Human Rights Commission Ex Officio 
DATE: August 30, 2010
SUBJECT: Draft Nondiscrimination Ordinance

At a special meeting of the Human Rights Commission held on Thursday, August 26, 2010, the Commission on a 7-0 vote, with two members absent, approved revisions to the draft Nondiscrimination Ordinance.

The revisions were the result of input received at the August 9, 2010 City Commission and Human Rights Commission Joint Study Session.

The following are excerpts from the draft ordinance highlighting the changes that were made:

Section 605.02 (I)

"Gender Identity." A person's actual or perceived gender. ~~including a person's self-image, appearance, expression, or behavior, whether or not that self-image, appearance, expression, or behavior is different from that traditionally associated with the person's biological sex as assigned at birth as being either female or male.~~

Section 605.03 (D)

No person shall promote real estate transactions by representing that changes are occurring or will occur in an area with respect to race, religion, ~~or~~ national origin, ~~sexual orientation, or gender identity.~~

Section 605.11 (A)

Any person claiming a violation of this ordinance shall file a signed, written complaint with the City Manager ~~or his or her designee~~ setting forth the details, including the names, dates, witnesses and other factual matters relevant to the claim within 180 days of the incident forming the basis of the complaint.

Section 605.11 (C)

In the course of the investigation, the City Manager ~~or his or her designee~~ may request a person to produce books, papers, records or other documents which may be relevant to a violation or alleged violation of this ordinance. If said person does not comply with such request, the City Attorney may apply to the Grand Traverse County Circuit Court for an order requiring production of said materials.

Section 605.11 (D)

Within thirty (30) days of a written complaint being filed, the City Manager or his or her designee shall undertake an investigation of any complaint alleging a violation of this chapter not currently recognized or proscribed by Michigan or federal anti-discrimination statutes, and cause all other complaints to be referred to an appropriate state or federal agency for review. After the completion of an investigation, the City Manager or his or her designee shall give written notice of the results of the investigation to the person who filed the complaint and the person accused of the violation. If the investigation establishes that a violation of this ordinance occurred, the City Manager shall either refer the matter to Conflict Resolution Services or a similar mediation service who will attempt to resolve the matter by mediating a conciliation agreement and persuasion or refer the complaint to the City Attorney for prosecution in a court of competent jurisdiction.

Section 605.12

A conciliation agreement may include ~~In cases involving alleged violations of this ordinance, the City Manager may enter into agreements whereby persons agree to methods of terminating discrimination or to reverse the effects of past discrimination.~~ Violations of such agreements shall be a violations of this ordinance.

Section 605.97 (B& C) removed in their entirety

~~Each day upon which a violation occurs shall constitute a separate and new violation.~~

~~A violation proved to exist on a particular day shall be presumed to exist on each subsequent day unless it is proved that the violation no longer exists.~~

Please forward the revised draft ordinance to the City Commission for their review.

Attachments: Draft Nondiscrimination Ordinance
Complaint Process Summary

TRAVERSE CITY CODE OF ORDINANCES

ORDINANCE AMENDMENT NO. _____

Effective date: _____

TITLE: NON-DISCRIMINATION ORDINANCE

THE CITY OF TRAVERSE CITY ORDAINS:

That Chapter 605, Non-Discrimination Ordinance, of the Traverse City Code of Ordinances, be enacted to read in its entirety as follows:

605.01 INTENT, PURPOSE AND CONSTRUCTION.

- A) It is the intent of the City of Traverse City that no person be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his or her civil rights or be discriminated against because of their actual or perceived race, color, religion, national origin, sex, age, height, weight, marital status, physical or mental disability, family status, sexual orientation, or gender identity.
- B) The prohibitions against discrimination as provided for in this ordinance are intended to supplement state and federal civil rights law prohibiting discrimination in the areas of employment, public accommodations, and housing. Provided, however, this ordinance shall be construed and applied in a manner consistent with First Amendment jurisprudence regarding the freedom of speech and exercise of religion.
- C) Nothing in this ordinance shall require preferential treatment of any person or group on the basis of sexual orientation or gender identity.

605.02 DEFINITIONS.

As used in this chapter, the following words and phrases have the following meanings:

- A. "Age." Chronological age.
- B. "City Manager." The City Manager of the City of Traverse City or his or her designee.
- C. "Contractor." A person who by contract furnishes services, materials or supplies. "Contractor" does not include persons who are merely creditors or debtors of the City, such as those holding the City's notes or bonds or persons whose notes, bonds or stock is held by the City.
- D. "Discriminate." To make a decision, offer to make a decision or refrain from making a decision based in whole or in part on the actual or perceived race, color, religion,

national origin, sex, age, height, weight, marital status, physical or mental disability, family status, sexual orientation, or gender identity, of another person.

1. Discrimination based on sex includes sexual harassment, which means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communication of a sexual nature when:
 - (a) Submission to such conduct or communication is made a term or condition either explicitly or implicitly to obtain employment, public accommodations, or housing.
 - (b) Submission to or rejection of such conduct or communication by an individual is used as a factor in decisions affecting such individual's employment, public accommodations or housing.
 - (c) Such conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations or housing, or creating an intimidating, hostile, or offensive employment, public accommodations, or housing environment.
2. Discrimination based on actual or perceived physical or mental limitation includes discrimination because of the use by an individual of adaptive devices or aids.

E. "Employer." Any person employing one (1) or more persons.

F. "Employment Agency." A person who undertakes to procure employees for an employer or procures opportunities for individuals to be employed by an employer.

G. "Family Status." The state of being in a family.

H. "Family." Includes either of the following:

1. An individual who is pregnant; or
2. Two or more individuals related by blood within three degrees of consanguinity, marriage, adoption, in a foster care relationship or legal custody relationship.

I. "Gender Identity." A person's actual or perceived gender.

J. "Housing Facility." Any dwelling unit or facility used or intended or designed to be used as the home, domicile or residence of one or more persons including, but not limited to, a house, apartment, rooming house, housing cooperative, hotel, motel, tourist home, retirement home or nursing home.

- K. "Labor Organization." An organization of any kind or structure in which employees participate or are members and which exists for the purposes, in whole or part, of dealing with employers concerning the terms and conditions of employment of its participants or members, whether or not such organization is subordinate to or affiliated with a national or international labor organization.
- L. "Marital Status." The state of being married, never married, divorced, or widowed.
- M. "Perceived." Refers to the perception of the person who acts, and not to the perception of the person for or against whom the action is taken.
- N. "Physical or Mental Disability." A determinable physical or mental characteristic resulting from disease, injury, congenital condition of birth, or functional disorder and is unrelated to one's ability to safely perform the work involved in jobs or positions available to such person for hire or promotion; or unrelated to one's ability to acquire, rent and maintain property; or unrelated to one's ability to utilize and benefit from the goods, services, activities, privileges and accommodations of a place of public accommodation "Physical or Mental Disability" does not include any condition caused by the current illegal use of a controlled substance or the use of alcohol liquor by an individual.
- O. "Place of Public Accommodation." An educational, governmental, health, entertainment, cultural, recreational, refreshment, transportation, financial institution, business or facility of any kind, whose goods, services, facilities, privileges, advantages or accommodations are extended, offered, sold, or otherwise made available to the public.
- P. "Religious Organization." An organization, church, group, or body of communicants that are organized not for pecuniary profit that regularly gathers for worship and religious purposes, and includes a religious-based private school that is not organized for pecuniary profit.
- Q. "Sexual Orientation." Male or female homosexuality, heterosexuality or bisexuality, whether by orientation or practice. Sexual orientation does not include the physical or sexual attraction to a minor by an adult.

605.03 DISCRIMINATORY HOUSING PRACTICES.

Except as otherwise provided in this ordinance:

- A. No person shall discriminate in leasing, selling or otherwise make available any housing facilities.
- B. No person shall discriminate in the terms, conditions, maintenance or repair in providing any housing facility.

- C. No person shall refuse to lend money for the purchase or repair of any real property or insure any real property solely because of the location in the City of such real property.
- D. No person shall promote real estate transactions by representing that changes are occurring or will occur in an area with respect to race, religion, national origin, sexual orientation, or gender identity.
- E. No person shall place a sign or other display on any real property which indicates that the property is for sale or has been sold when it is not for sale or has not recently been sold.

605.04 DISCRIMINATORY PUBLIC ACCOMMODATION PRACTICES.

- A. Except as otherwise provided in this ordinance, no person shall discriminate in making available full and equal access to all goods, services, activities, privileges, and accommodations of any place of public accommodation.
- B. Nothing in this ordinance permits or requires access to any place of public accommodation for the purpose or intent of engaging in criminal conduct.
- C. Nothing in this ordinance shall require the construction or provision of unisex, single-user restrooms, changing rooms, locker rooms, or shower facilities nor effect policies regarding the use of restroom, changing rooms, locker rooms, or shower facilities.

605.05 DISCRIMINATORY EMPLOYMENT PRACTICES.

Except as otherwise provided in this ordinance.

- A. No employer shall discriminate in the employment, compensation, work classifications, conditions or terms, promotion or demotion, or termination of employment of any person.
- B. No labor organization shall discriminate in limiting membership, conditions of membership, or termination of membership of any person in any labor union or apprenticeship program.
- C. No employment agency shall discriminate in the procurement or recruitment of any person for possible employment with an employer.

605.06 OTHER PROHIBITED PRACTICES.

- A. No person shall adopt, enforce or employ any policy or requirement, publish, post or broadcast any advertisement, sign or notice which discriminates or indicates discrimination in providing housing, employment or public accommodations.

- B. No person shall discriminate in the publication or distribution of advertising material, information or solicitation regarding housing, employment or public accommodations.
- C. No agent, broker, labor organization, employment agency or any other intermediary shall discriminate in making referrals, listings or providing information with regard to housing, employment or public accommodations. A report of the conviction of any such person for a violation of this ordinance shall be made to the applicable licensing or regulatory agency for such person or business.
- D. No person shall coerce, threaten or retaliate against a person for making a complaint or assisting in the investigation regarding a violation or alleged violation of this ordinance, nor require, request, conspire with, assist or coerce another person to retaliate against a person for making a complaint or assisting in an investigation.
- E. No person shall conspire with, assist, coerce or request another person to discriminate in any manner prohibited by this ordinance.

605.07 NON-DISCRIMINATION BY CITY CONTRACTORS.

- A. All contractors proposing to do business with the City of Traverse City shall satisfy the nondiscrimination administrative policy adopted by the City Manager in accordance with the guidelines of this section. All contractors shall receive approval from the City Manager prior to entering into a contract with the City, unless specifically exempted by administrative policy.
- B. A contractor shall, as a condition of being deemed a responsible bidder, at the time of its submission to the City in responding to an invitation for bids or request for proposals, certify in writing that it is in compliance with the provisions of this ordinance.
- C. All City contracts shall provide further that breach of the obligations not to discriminate shall be a material breach of the contract.
- D. In addition, the contractor shall be liable for any costs or expenses incurred by the City in obtaining from other sources the work and services to be rendered or performed or the goods or properties to be furnished or delivered to the City under the contract.

605.08 DISCRIMINATORY EFFECTS.

No person shall adopt, enforce or employ any policy or requirement which has the effect of creating unequal opportunities according to actual or perceived race, color, religion, national origin, sex, age, height, weight, family status, sexual orientation, marital status, physical or mental disability, or gender identify, for a person to obtain housing, employment or public accommodation, except for a bona fide business necessity. Such a bona fide business necessity

does not arise due to a mere inconvenience or because of suspected or actual objection to such a person by neighbors, customers, or other persons but shall require a demonstration that the policy or requirement is reasonably necessary to the normal operation of the person's business.

605.09 EFFECTS.

Notwithstanding anything contained in this ordinance, the following practices shall not be violations of this ordinance:

- A. For a religious organization to restrict the occupancy of any of its housing facilities or accommodations which are operated as a direct part of religious activities to persons of the denomination involved or to restrict employment opportunities for officers, religious instructors and clergy to persons of that denomination. It is also permissible for a religious organization to restrict employment opportunities, educational facilities, housing facilities, and homeless shelters or dormitories that are operated as a direct part of its religious activities to persons who are members of or who conform to the moral tenets of that religious organization.
- B. Standards established for the construction, repair, maintenance, improvement, occupancy, lease or sale of one-family and two-family dwellings.
- C. For the owner or operator of a housing facility or public accommodation facility, respectively, devoted entirely to the housing and accommodation of individuals of one sex, to restrict occupancy and use on the basis of sex.
- D. To limit occupancy in a housing project or to provide public accommodations or employment privileges or assistance to persons of low income, persons over fifty-five (55) years of age or disabled persons.
- E. To engage in a bona fide effort to establish an affirmative action program to improve opportunities in employment consistent with applicable state and federal law.
- F. To discriminate based on a person's age when such discrimination is required by state, federal, or local law.
- G. To refuse to enter a contract with an unemancipated minor.
- H. To refuse to admit to a place of public accommodation serving alcoholic beverages to a person under the legal age for purchasing alcoholic beverages.
- I. To refuse to admit to a place persons under eighteen (18) years of age to a business providing entertainment or selling literature that the operator of said business deems unsuitable for minors.
- J. For an educational institution to limit the use of its facilities to those affiliated with such institution.

- K. To provide discounts on products or service to students, or on the basis of age.
- L. To discriminate in any arrangement for the shared ownership, lease or residency of a dwelling unit.
- M. For a governmental institution to restrict any of its facilities or to restrict employment opportunities based on duly-adopted institutional policies that conform to federal and state laws and regulations.
- N. To restrict participation in an instructional program, athletic event or on an athletic team on the basis of age, sex, height, or weight consistent with applicable federal and state law.
- O. To restrict membership in a private membership organization that is not open to the general public except to the extent that the private membership organization permits members to invite guests on the premises are not exempted as it concerns a member's guest.
- P. To the employment of an individual by one's family.
- Q. To the use of marital status or family status limitations in a health or pension plan consistent with applicable federal and state laws and regulations.
- R. To the rental of housing facilities in a building which contains dwelling units for not more than two families living independently of each other if the owner of the building or a member of the owner's family resides in one of the dwelling units, or to the rental of a room or rooms in a single-family dwelling by an individual if the lessor or a member of the lessor's family resides in the dwelling.

605.10 INFORMATION AND INVESTIGATION.

- A. Any person claiming a violation of this ordinance shall file a signed, written complaint with the City Manager or his or her designee setting forth the details, including the names, dates, witnesses and other factual matters relevant to the claim within 180 days of the incident forming the basis of the complaint.
- B. No person shall provide false information to any authorized employee investigating a complaint regarding a violation of this ordinance.
- C. In the course of the investigation, the City Manager or his or her designee may request a person to produce books, papers, records or other documents which may be relevant to a violation or alleged violation of this ordinance. If said person does not comply with such request, the City Attorney may apply to the Grand Traverse County Circuit Court for an order requiring production of said materials.

- D. Within thirty (30) days of a written complaint being filed, the City Manager or his or her designee shall undertake an investigation of any complaint alleging a violation of this chapter not currently recognized or proscribed by Michigan or federal anti-discrimination statutes, and cause all other complaints to be referred to an appropriate state or federal agency for review. After the completion of an investigation, the City Manager or his or her designee shall give written notice of the results of the investigation to the person who filed the complaint and the person accused of the violation. If the investigation establishes that a violation of this ordinance occurred, the City Manager shall either refer the matter to Conflict Resolution Services or a similar mediation service who will attempt to resolve the matter by mediating a conciliation agreement or refer the complaint to the City Attorney for prosecution in a court of competent jurisdiction.

605.11 CONCILATION AGREEMENTS.

A conciliation agreement may include agreements whereby persons agree to methods of terminating discrimination or to reverse the effects of past discrimination. Violations of such agreements shall be a violation of this ordinance.

605.12 INJUNCTIONS.

The City Attorney may commence a civil action to obtain injunctive relief to prevent discrimination prohibited by this ordinance, to reverse the effects of such discrimination or to enforce a conciliation agreement.

605.13 PROSECUTION.

- A. Prosecution for violation of this ordinance may be initiated by complaint of the affected person on the basis of a violation of a conciliation agreement or by the City Manager on the basis of an investigation undertaken by the City Manager.
- B. Violation of this ordinance shall be prosecuted by the City Attorney as a municipal civil infraction pursuant to the provisions of the Revised Judicature Act of 1961, MCL 600.101, et seq.

605.14 PENALTIES.

- A. A violation of any provision of this ordinance is a municipal civil infraction punishable by a fine of not more than \$500.00, plus all costs of the action. The court may issue and enforce any judgment, writ, or order necessary to enforce this ordinance. This may include reinstatement, payment of lost wages, hiring and promotion, sale, exchange, lease or sublease of real property, admission to a place of public accommodation, and other relief deemed appropriate.

- B. Nothing contained in this ordinance shall be construed to limit in any way the remedies, legal or equitable, which are available to the City or any person for the prevention or correction of discrimination.

605.15 REPEALER.

All former ordinances or parts of ordinances conflicting or inconsistent with the provisions of this ordinance are repealed.

605.16 SEVERABILITY.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this ordinance.

The effective date of this Ordinance is the _____ day of _____, 2010.

I hereby certify the above ordinance amendment was introduced on _____, 2010, at a regular meeting of the City Commission and was enacted on _____, 2010, at a regular meeting of the City Commission by a vote of Yes: ___ No: ___ at the Commission Chambers, Governmental Center, 400 Boardman Avenue, Traverse City, Michigan.

Christopher M. Bzdok, Mayor

Debra A. Curtiss, City Clerk

I hereby certify that a notice of adoption of the above ordinance was published in the Traverse City Record Eagle, a daily newspaper published in Traverse City, Michigan, on _____.

Debra A. Curtiss, City Clerk