

AMERICAN FORK CITY ORDINANCE NO. _____

AN ORDINANCE ENACTING A NEW CHAPTER OF THE AMERICAN FORK MUNICIPAL CODE RELATING TO UNLAWFUL DISCRIMINATORY EMPLOYMENT PRACTICES BASED ON SEXUAL ORIENTATION OR GENDER IDENTITY.

WHEREAS, the City of American Fork is comprised of diverse and varied groups, communities, and individuals;

WHEREAS, American Fork City values this diversity;

WHEREAS, the Utah Antidiscrimination Act, Utah Code § 34A-5-101 *et seq.*, addresses employment-related discrimination based on race, ethnicity, national origin, religion, age, sex, and disability, but does not address employment-related discrimination based on sexual orientation or gender identity;

WHEREAS, the American Fork City Council has concluded that discrimination based on sexual orientation and gender identity are among the forms of discrimination that adversely affect the general welfare of the City and the vitality of its neighborhoods; and

WHEREAS, Utah Code § 10-8-84(1) grants the City of American Fork the power “to provide for the safety and preserve the health, and promote the prosperity, improve the morals, peace and good order, comfort, and convenience of the city and its inhabitants.”

NOW THEREFORE BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF AMERICAN FORK CITY, UTAH, AS FOLLOWS:

Title of Ordinance

The provisions codified in this chapter shall be known and may be referred to as the “Employment Non-Discrimination Ordinance.”

Purpose

Every individual in the city has the right to work and earn wages through gainful employment. Discriminatory employment practices are detrimental because they impede the social and economic progress of the city by preventing all of the City's citizens from contributing to or fully participating in the cultural, spiritual, social and commercial life of the community, which is essential to the growth and vitality of the city's neighborhoods and businesses. The Utah Antidiscrimination Act, Utah Code § 34A-5-101 *et seq.*, addresses employment-related discrimination based on race, color, sex, pregnancy, childbirth or pregnancy-related conditions, religion, national origin, age (if 40 years of age or older) and disability, but does not address discrimination based on sexual orientation or gender identity.

The City has found that discrimination in employment on the basis of sexual orientation

and gender identity must be addressed. The denial or deprivation of employment rights because of an individual's sexual orientation or gender identity is detrimental to the health, safety, and welfare of the City's citizens and damages the City's economic well being. The purpose of this chapter is to provide a clear and comprehensive mandate for the prevention and elimination of discrimination in employment in the city against individuals based upon sexual orientation or gender identity and this chapter shall be liberally construed to achieve that purpose.

Administration

The Mayor is responsible for administering and implementing this chapter.

No Private Right of Action; No Special Rights

This chapter does not create a private cause of action, nor does it create any right or remedy that is the same or substantially equivalent to the remedies provided under federal or state law. This chapter does not create any special rights or privileges which would not be available to all of the City's citizens because every person has a sexual orientation and a gender identity.

Nothing in this chapter shall be construed to authorize an employee to harass his employer, co-workers, or customers, or to provide an employee with an affirmative defense against claims of harassment arising under the Utah Antidiscrimination Act or the Title VII of the Civil Rights Act of 1964.

Severability

This chapter shall not be construed to conflict with the Utah Antidiscrimination Act, Title VII of the Civil Rights Act of 1964, or any regulations issued by state or federal agencies pursuant to these laws.

If any section, sentence, paragraph, term definition or provision of this chapter is for any reason determined to be illegal, invalid, superseded by other authority or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such portion shall be deemed a separate, distinct, and independent provision and such determination shall have no effect on the validity of any other section, sentence, paragraph, term, definition or provision of this chapter, all of which will remain in full force and effect.

Definitions

ADMINISTRATOR means the person designated by the Mayor to receive, investigate, and conciliate complaints under this chapter and includes the Administrator's designated representatives.

COMPLAINANT means a person, including the administrator, who files a complaint under this chapter.

CONCILIATION means the attempted resolution of issues raised in a complaint filed under this chapter, or raised in the investigation of the complaint, through informal negotiations involving the Complainant, the Respondent, and the Administrator.

CONCILIATION AGREEMENT means a written agreement setting forth the resolution of issues by conciliation under this chapter.

DISCRIMINATION means any direct or indirect exclusion, distinction, segregation, limitation, refusal, denial, or other differentiation in the treatment of a person because of a person's actual or perceived sexual orientation or gender identity or because of a person's association with any such person. Discrimination shall not be interpreted to require or to grant or accord preferential treatment to any person because of that person's sexual orientation or gender identity.

EMPLOYEE means any individual applying with or employed by an employer. The term does not include an elected official.

EMPLOYER means any person employing fifteen (15) or more employees in the City for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year, and includes any agent of such person.

EMPLOYMENT AGENCY means any person, and any agent of a person, undertaking to procure employees or opportunities to work for any other person in the City or holding itself out to be equipped to procure employees or opportunities to work for any other person in the City.

GENDER IDENTITY means a person's actual or perceived gender identity, appearance, mannerisms, or other characteristics of an individual with or without regard to the person's sex at birth.

LABOR ORGANIZATION means any organization that exists for the purpose in whole or in part of collective dealing with Employers concerning grievances, terms or conditions of employment; or other mutual aid or protection in connection with employment.

OTHERWISE QUALIFIED means a person who possesses the following qualifications required by an employer for any particular job, job classification, or position:

- a. education;
- b. training;
- c. ability;
- d. moral character;
- e. integrity;
- f. disposition to work;
- g. adherence to reasonable rules and regulations; and
- h. other job related qualifications required by an employer.

PERSON means one or more individuals, partnerships, associations, corporations, legal representatives, trusts or trustees, receivers and the City.

RELIGIOUS ORGANIZATION means a religious corporation, association, educational institution, society, trust, or any entity or association which is a wholly owned or controlled subsidiary or agency of any religious corporation, association, society, trust or corporation sole.

RESPONDENT means a person identified as having committed an unlawful practice under this chapter.

SEXUAL ORIENTATION means a person's actual or perceived orientation as heterosexual, homosexual, or bisexual.

UNLAWFUL PRACTICE means a discriminatory act or practice relating to employment that is prohibited under this chapter.

Exemptions

This chapter does not apply to:

- A. A religious organization;
- B. An expressive association whose employment of a person protected by this chapter would significantly burden the association's rights of expressive association under *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000);
- C. The United States Government, any of its departments or agencies, or any corporation wholly owned by it; or
- D. The State of Utah or any of its departments, agencies or political subdivisions other than the City.

Unlawful Employment Practices

- A. Employers. An employer may not refuse to hire, promote, discharge, demote, or terminate any person, and may not retaliate against, harass, or discriminate in matters of compensation or in terms, privileges, and conditions of employment against any person otherwise qualified because of a person's sexual orientation or gender identity.
- B. Employment agencies. An employment agency may not refuse to list and properly classify for employment, or refuse to refer a person for employment, in a known available job for which the person is otherwise qualified because of a person's sexual orientation or gender identity.

- C. Labor Organizations. A labor organization may not exclude any person otherwise qualified from full membership rights in the labor organization, expel the person from membership in the labor organization, or otherwise discriminate against or harass any of the labor organization's members in full employment of work opportunity, or representation, because of a person's sexual orientation or gender identity.
- D. Training programs. An employer, labor organization, joint apprenticeship, committee, or vocational school, providing, coordinating, or controlling apprenticeship programs, or providing, coordinating, or controlling on-the-job training programs, instructional, training or retraining programs may not deny to, or withhold from, any qualified person, the right to be admitted to, or participate in any apprenticeship training program, on-the-job training program, or other occupational instruction, training or retraining program because of a person's sexual orientation or gender identity.
- E. Notices and advertisements. Unless based upon a bona fide occupational qualification, or required by and given to an agency of government for security reasons, an employer, employment agency, or labor organization may not print, or circulate, or cause to be printed or circulated, any statement, advertisement, or publication, use any form of application for employment or membership, or make any inquiry in connection with prospective employment or membership that expresses, either directly or indirectly any limitation, specification, or discrimination because of a person's sexual orientation or gender identity.

It is unlawful for a joint labor-management committee controlling apprenticeship or other training or retraining (including on-the-job training programs) to print or publish, or cause to be printed or published, any notice or advertisement relating to admission to, or employment in, any program established to provide apprenticeship or other training by the joint labor-management committee that indicates any preference, limitation, specification, or discrimination based on sexual orientation or gender identity.

Nothing in this chapter prohibits a notice or advertisement from indicating a preference, limitation, specification, or discrimination based on sexual orientation or gender identity when sexual orientation or gender identity is a bona fide occupational qualification for employment.

- F. No Preferential Treatment. Nothing in this chapter shall be interpreted to require any employer, employment agency, labor organization, vocational school, joint labor-management committee, or apprenticeship program subject to this chapter to grant preferential treatment to any person because of the person's sexual orientation or gender identity on account of an imbalance which may exist with respect to the total number or percentage of persons of any sexual orientation or gender identity employed by any employer, referred or classified for employment by an employment agency or labor organization, admitted to membership or

classified by any labor organization, or admitted to or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of that sexual orientation or gender identity available in the City's available work force.

G. Unlawful Intimidation, Retaliation, and Coercion

It is unlawful for any person to discriminate against, harass, threaten, harm, damage, or otherwise penalize another person for opposing an unlawful practice, for filing a complaint, or for testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing under this chapter.

Procedures for Filing a Complaint

- A. Any person who claims to have been injured by an unlawful employment practice subject to the City's jurisdiction under this chapter may file a complaint with the Administrator. A complaint may also be filed by the Administrator if the Administrator has reasonable cause to believe that a person has committed an unlawful employment practice. A complaint must be filed within 120 calendar days after an alleged unlawful employment practice has occurred.
- B. A complaint must be in writing on a form provided by the Administrator, made under oath or affirmation, and contain the following information:
1. The Complainant's name, address, and signature;
 2. The date the alleged unlawful employment practice occurred;
 3. A statement of the facts upon which the allegation of an unlawful employment practice are based; and
 4. The Respondent's name and address.
- C. Promptly after the filing of a complaint, the Administrator shall:
1. Provide the Respondent named in the complaint written notice that a complaint alleging the commission of an unlawful employment practice has been filed against the Respondent.
 2. Furnish a copy of the complaint to the Respondent; and
 3. Advise the Respondent of the Respondent's procedural rights and obligations, including the right to file a written, signed, and verified informal answer to the complaint within 15 days after service of notice of the complaint.

- D. A Respondent may file an answer to the complaint within 15 days of service of notice of the complaint. The answer must be in writing, made under oath or affirmation, and contain the following information:
1. The Respondent's name, address, telephone number, and signature of the Respondent or the Respondent's attorney, if any; and
 2. A concise statement of facts in response to the allegations in the complaint, including facts of any defense or exception.

Investigation

- A. Upon the filing of a complaint, the Administrator shall commence an investigation to determine the facts behind the complaint and whether there is reasonable cause to believe the Respondent committed an unlawful employment practice, except that no investigation may commence if, after reviewing the allegations of the complaint, the Administrator determines that the complaint does not come within the scope of this chapter. Upon determining that a particular complaint does not come within the scope of this chapter, the Administrator shall dismiss the complaint, notify the Complainant and Respondent and take no further action.
- B. In connection with any investigation of a complaint filed under this chapter, the Administrator shall seek the voluntary cooperation of any person to:
1. Obtain access to premises, records, documents, individuals and any other possible source of relevant information;
 2. Examine, record, and copy necessary materials; and
 3. Take and record testimony or statements of any person reasonably necessary for the furtherance of the investigation.
- C. The Administrator may request the City Recorder to issue an executive branch subpoena or subpoena duces tecum to compel the attendance of a witness or the production of relevant materials or documents.
- D. The Administrator may dismiss a complaint during the investigation and prior to referral to the City Attorney if the Administrator determines that:
1. The complaint was not filed within the required time period;
 2. The location of the alleged unlawful employment practice is not within the City's jurisdiction;
 3. The employer does not employ a sufficient number of employees in the City to meet this chapter's jurisdictional requirements;

4. The alleged unlawful employment practice is not a violation of this chapter;
5. The Complainant refuses to cooperate with the Administrator in the investigation of the complaint or enforcement of an executed conciliation agreement;
6. The Complainant cannot be located after the Administrator has performed a reasonable search; or
7. A conciliation agreement has been executed by the Complainant and Respondent.

Conciliation

- A. During or after the investigation, but subsequent to the mailing of the notice of the complaint to the Respondent, the Administrator shall, if the Respondent appears to have committed an unlawful employment practice, attempt to conciliate the complaint.
- B. In conciliating a complaint, the Administrator shall try to achieve a just resolution and obtain assurances that the Respondent will satisfactorily remedy any violation of the Complainant's rights and take action to ensure the elimination of both present and future unlawful employment practices.
- C. A conciliation agreement may include:
 1. Sensitivity training for the Respondent and/or the Respondent's employees;
 2. The Respondent's agreement to adopt and pursue a policy of non-discrimination in unemployment practices; and
 3. The Respondent's agreement to not engage in discriminatory practices in the future.
- D. A conciliation agreement executed under this section must be in writing in a form approved by the City Attorney and must be signed and verified by the Respondent and the Complainant, subject to approval of the Administrator who shall indicate approval by signing the agreement.
- E. If a Respondent voluntarily enters into a conciliation agreement, the Administrator shall immediately dismiss the complaint.

Disposition of a Complaint

- A. If, upon completion of an investigation of a complaint, the Administrator determines that an unlawful employment practice has occurred and is unable to secure an acceptable conciliation agreement from the Respondent, then the Administrator shall refer the case to the City Attorney. The Administrator shall refer the entire file to the City Attorney, who shall determine how best to pursue further action, if any, on the complaint.

- B. If the City Attorney determines that cause exists to find that an unlawful employment practice occurred and the facts are sufficient to warrant the initiation of an action, then the City Attorney shall provide written notification to the Respondent and the Complainant that an action to enforce this chapter may be initiated in court.

- C. If the City Attorney determines that there is not sufficient cause that an unlawful employment practice occurred or that the facts are insufficient to warrant the initiation of an action in court, the City Attorney shall provide written notification to the Respondent and the Complainant and notify the Administrator who shall then dismiss the complaint.

Offenses and Penalties

An offense committed under this chapter by an employer employing fifty (50) or fewer employees is punishable by a civil fine of not more than \$500.00. An offense committed under this chapter by an individual employing fifty-one (51) or more employees or by an employment agency or labor organization is punishable by a civil fine of not more than \$1,000.00.

This ordinance shall take effect immediately upon its passage and publication as prescribed by law.

Passed by the American Fork City Council on this ____ day of _____, _____.

MAYOR

J. H. HADFIELD
Mayor of American Fork

ATTEST:

RICHARD COLBORN
City Recorder