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Chapter 112 NON-DISCRIMINATION

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9:150. Intent.

It is the intent of the city that no person be denied to equal protection of the laws; nor shall any person be denied the enjoyment of his or her civil or political rights or be discriminated against because of actual or perceived race, color, religion, national origin, sex, age, height, weight, condition of pregnancy, marital status, physical or mental limitation, source of income, family responsibilities, educational association, sexual orientation, gender identity or HIV status. As used herein, "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.

Nothing herein contained shall be construed to prohibit any affirmative action laws passed by any level of government.

(Ord. No. 4-78, 3-13-78; Ord. No. 10-99, § 1, 3-1-99)

9:151. Definitions.

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

- (1) *Age.* Chronological age.
- (2) *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.
- (3) *Director.* The director of the Department of Human Rights.
- (4) *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, condition of pregnancy, marital status, physical or mental limitation, source of income, family responsibilities, educational association, sexual orientation, gender identity or HIV status of another person or that person's relatives or associates.

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:

- (i) Submission to such conduct or communication is made a term or condition either explicitly or implicitly to obtain employment, public accommodations or housing.
- (ii) 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.
- (iii) 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.

Discrimination based on actual or perceived physical or mental limitation includes discrimination because of the use by an individual of adaptive devices or aids.

As used herein, "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.

- (5) *Educational association.* The fact of being enrolled or not enrolled at any educational institution.
- (6) *Employer.* A person employing 5 or more persons.
- (7) *Family responsibilities.* The state of being or the potential to become a contributor to the support of a person or persons in a dependent relationship.
- (8) *Gender identity.* A person's actual or perceived gender, including a person's gender identity, self-image, appearance, expression, or behavior, whether or not that gender identity, self-image, appearance, expression, or behavior is different from that traditionally associated with the person's sex at birth as being either female or male.
- (9) *HIV status.* A person who has, or has been diagnosed as having been infected with, the human immunodeficiency virus, whether or not that person has or has been diagnosed as having acquired immunodeficiency syndrome or acquired immunodeficiency syndrome related complex.
- (10) *Housing facility.* Any dwelling unit or facility used for a person to regularly sleep and keep personal belongings including, but not limited to, a house, apartment, rooming house, housing cooperative, hotel, motel, tourist home, retirement home or nursing home.
- (11) *Marital status.* The state of being married, unmarried, divorced or widowed.
- (12) *Mental limitation.* A limitation of mental capabilities unrelated to one's ability to safely perform the work involved in jobs or positions available to such person for hire or promotion; a limitation of mental capabilities unrelated to one's ability to acquire, rent and maintain property; or a limitation of mental capabilities unrelated to one's ability to utilize and benefit from the goods, services, activities, privileges and accommodations of a place of public accommodation. "Mental limitation" includes, but is not limited to, developmental disabilities, psychological, etc. "Mental limitation" does not include any condition caused by the current illegal use of a controlled substance.
- (13) *Minority.* A person who is Black or African American, Native American, or Alaskan native,

Hispanic or Latino, Asian, Native Hawaiian or other Pacific Islander.

- (14) *Physical limitation.* A limitation or physical capabilities unrelated to one's ability to safely perform the work involved in jobs or positions available to such person for hire or promotion; a limitation of physical capabilities unrelated to one's ability to acquire, rent and maintain property; or a limitation of mental capabilities unrelated to one's ability to utilize and benefit from the goods, services, activities, privileges and accommodations of a place of public accommodation. "Physical limitation" includes, but is not limited to, blindness or partial sightedness, deafness or hearing impairment, muteness, partial or total absence of physical member, speech impairment and motor impairment. "Physical limitation" does not include any condition caused by the current illegal use of a controlled substance.
- (15) *Place of public accommodation.* An educational, governmental, health, day care, entertainment, cultural, recreational, refreshment, transportation, financial institution, accommodation, business or other facility of any kind, whose goods, services, facilities, privileges, advantages or accommodations are extended, offered, sold or otherwise made available to the public, or which receives financial support through the solicitation of the general public or through governmental subsidy of any kind.
- (16) *Sexual orientation.* Male or female homosexuality, heterosexuality or bisexuality, by orientation or practice.
- (17) *Source of income.* Any legal source from which a person obtains money.

(Ord. No. 4-78, 3-13-78; Ord. No. 6-92, § 1, 1-21-92; Ord. No. 10-99, § 2, 3-1-99)

9:152. Discriminatory housing practices.

- (1) No person shall discriminate in leasing, selling or otherwise making available any housing facilities.
- (2) No person shall discriminate in the terms, conditions, maintenance or repair in providing any housing facility.
- (3) 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.
- (4) 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.
- (5) 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.

(Ord. No. 4-78, 3-13-78)

9:153. Discriminatory public accommodation practices.

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. No person shall prohibit a breastfeeding mother from or segregate a breastfeeding mother within any public accommodation where she and the child would otherwise be authorized to be.

(Ord. No. 4-78, 3-13-78; Ord. No. 4-06, § 1, 3-6-06)

9:154. Discriminatory employment practices.

- (1) No person shall discriminate in the employment, compensation, work classifications, conditions or terms, promotion or demotion, or termination of employment of any person.
- (2) No person shall discriminate in limiting membership, conditions of membership or termination of

membership in any labor union or apprenticeship program.

(Ord. No. 4-78, 3-13-78)

9:155. Other prohibited practices.

- (1) 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.
- (2) No person shall discriminate in the publication or distribution of advertising material, information or solicitation regarding housing, employment or public accommodations.
- (3) No agent, broker, labor union, 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 chapter shall be made to the applicable licensing or regulatory agency for such person or business.
- (4) 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 chapter, nor require, request, conspire with, assist or coerce another person to retaliate against a person for making a complaint or assisting in an investigation.
- (5) No person shall conspire with, assist, coerce or request another person to discriminate in any manner prohibited by this chapter.

(Ord. No. 4-78, 3-13-78)

9:156. Information and investigation.

- (1) No person shall provide false information to any authorized employee investigating a complaint regarding a violation of this chapter.
- (2) For an investigation, the director may request a person to produce books, papers, records or other documents which may be relevant to a violation or alleged violation of this chapter. If said person does not comply with such request, the city attorney may apply to Washtenaw County Circuit Court for an order requiring production of said materials.

(Ord. No. 4-78, 3-13-78)

9:157. Conciliation agreements.

In cases involving alleged violations of this chapter, the director may enter into agreements whereby persons agree to methods of terminating discrimination or to reverse the effects of past discrimination. Such agreements may be reviewed by the Human Rights Commission. Violations of such agreements shall be violations of this chapter.

(Ord. No. 4-78, 3-13-78)

9:158. Injunctions.

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

(Ord. No. 4-78, 3-13-78)

9:159. 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, condition of pregnancy, source of income, family responsibilities, educational association, sexual orientation, marital status, physical or mental limitation, gender identity or HIV status for a person to obtain housing, employment or public accommodation, except for a bona fide business necessity. Such a 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. As used herein "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.

(Ord. No. 4-78, 3-13-78; Ord. No. 10-99, § 3, 3-1-99)

9:160. Exceptions.

Notwithstanding anything contained in this chapter, the following practices shall not be violations of this chapter.

- (1) For a religious organization or institution to restrict any of its facilities of housing 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.
- (2) For the owner of an owner-occupied 1-family or 2-family dwelling, or a housing facility or public accommodation facility, respectively, devoted entirely to the housing and accommodation of individuals of 1 sex, to restrict occupancy and use on the basis of sex.
- (3) To limit occupancy in a housing project or to provide public accommodations or employment privileges or assistance to persons of low income, over 55 years of age or who are handicapped.
- (4) To engage in a bona fide effort to establish an affirmative action program to improve opportunities in employment for minorities and women.
- (5) To discriminate based on a person's age when such discrimination is required by state, federal or local law.
- (6) To refuse to enter a contract with an unemancipated minor.
- (7) To refuse to admit to a place of public accommodation serving alcoholic beverages a person under the legal age for purchasing alcoholic beverages.
- (8) To refuse to admit to a place persons under 18 years of age to a business providing entertainment or selling literature which the operator of said business deems unsuitable for minors.
- (9) For an educational institution to limit the use of its facilities to those affiliated with such institution.
- (10) To provide discounts on products or service to students, minors and senior citizens.
- (11) To discriminate in any arrangement for the sharing of a dwelling unit.
- (12) To restrict use of lavatories and locker room facilities on the basis of sex.
- (13) 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.
- (14) To restrict participation in an instructional program, athletic event or on an athletic team on the basis of age or sex.

(Ord. No. 4-78, 3-13-78)

9:161. Nondiscrimination by city contractors.

- (1) All contractors proposing to do business with the City of Ann Arbor shall satisfy the nondiscrimination administrative policy adopted by the City Administrator in accordance with the guidelines of this section. All contractors shall receive approval from the director prior to entering into a contract with the city, unless specifically exempted by administrative policy. All city contractors shall take affirmative action to insure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity and tends to eliminate inequality based upon race, national origin or sex.
- (2) Each prospective contractor shall submit to the city data showing current total employment by occupational category, sex and minority group. If, after verifying this data, the director concludes that it indicates total minority and female employment commensurate with their availability within the contractor's labor recruitment area, i.e., the area from which the contractor can reasonably be expected to recruit, said contractor shall be accepted by the director as having fulfilled affirmative action requirements for a period of 1 year at which time the director shall conduct another review. Other contractors shall develop an affirmative action program in conjunction with the director. Said program shall include specific goals and timetables for the hiring and promotion of minorities and females. Said goals shall reflect the availability of minorities and females within the contractor's labor recruitment area. In the case of construction contractors, the director shall use for employment verification the labor recruitment area of the Ann Arbor-Ypsilanti standard metropolitan statistical area. Construction contractors determined to be in compliance shall be accepted by the director as having fulfilled affirmative action requirements for a period of 6 months at which time the director shall conduct another review.
- (3) In hiring for construction projects, contractors shall make good faith efforts to employ local persons, so as to enhance the local economy.
- (4) All contracts shall include provisions through which the contractor agrees, in addition to any other applicable federal or state labor laws:
 - (a) To set goals, in conference with the director, for each job category or division of the work force used in the completion of the city work;
 - (b) To provide periodic reports concerning the progress the contractor has made in meeting the affirmative action goals it has agreed to;
 - (c) To permit the director access to all books, records and accounts pertaining to its employment practices for the purpose of determining compliance with the affirmative action requirements.
- (5) The director shall monitor the compliance of each contractor with the nondiscrimination provisions of each contract. The director shall develop procedures and regulations consistent with the administrative policy adopted by the City Administrator for notice and enforcement of non-compliance. Such procedures and regulations shall include a provision for the posting of contractors not in compliance.
- (6) All city contracts shall provide further that breach of the obligation not to discriminate shall be a material breach of the contract for which the city shall be entitled, at its option, to do any or all of the following:
 - (a) To cancel, terminate, or suspend the contract in whole or part and/or refuse to make any required periodic payments under the contract;
 - (b) Declare the contractor ineligible for the award of any future contracts with the city for a specified length of time;
 - (c) To recover liquidated damages of a specified sum, said sum to be that percentage of the labor expenditure for the time period involved which would have accrued to minority

- group members had the affirmative action not been breached;
- (d) Impose for each day of non-compliance, liquidated damages of a specified sum, based upon the following schedule:

Contract Amount	Assessed Damages Per Day of Non-Compliance
\$10,000–24,999	\$25.00
25,000–99,999	50.00
100,000–199,999	100.00
200,000–499,999	150.00
500,000–1,499,999	200.00
1,500,000–2,999,999	250.00
3,000,000–4,999,999	300.00
5,000,000 and above	500.00

- (e) In addition the contractor shall be liable for any costs or expenses incurred by the City of Ann Arbor 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 this contract.

(Ord. No. 28-97, § 1, 6-16-97)

9:162. Prosecution.

Prosecution for violation of this chapter may be initiated by complaint of the affected person or by the director on the basis of an investigation initiated by the director.

(Ord. No. 4-78, 3-13-78)

9:163. Penalties.

- (1) A violation of any provision of this chapter is a 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 chapter. 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.
- (2) Each day upon which a violation occurs shall constitute a separate violation.
- (3) 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.
- (4) Nothing contained in this chapter shall be construed to limit in any way the remedies, legal or equitable, which are available to the city or any other person for the prevention or correction of discrimination.

(Ord. No. 4-78, 3-13-78; Ord. No. 18-91, § 1, 4-4-91; Ord. No. 40-96, § 1, 11-18-96)

9:164. Private actions for damages or injunctive relief.

- (1) An individual who is the victim of discriminatory action in violation of this chapter may bring a civil action for appropriate injunctive relief or damages or both against the person(s) who acted

in violation of this chapter.

- (2) As used in subsection (1), "damages" means damages for injury or loss caused by each violation of this chapter, including reasonable attorney fees.
- (3) Private actions and remedies under this section shall be in addition to any actions for violations which the city may take.

(Ord. No. 40-96, § 2, 11-18-96)