

ORDINANCE NO. 8-2013

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES OF THE CITY OF BATTLE CREEK, MICHIGAN BY AMENDING CHAPTER 214 AND RENAMING IT: “DISCRIMINATION PROHIBITED”

THE CITY OF BATTLE CREEK ORDAINS:

That Title Four – Legislation, Chapter 214, shall be amended and renamed “Discrimination Prohibited” and which shall read as follows:

CHAPTER 214, DISCRIMINATION PROHIBITED.

- 214.01 Intent, Purpose and Construction.
- 214.02 Definitions.
- 214.03 Discriminatory Housing Practices.
- 214.04 Discriminatory Public Accommodation Practices.
- 214.05 Discriminatory Employment Practices.
- 214.06 Other Prohibited Practices.
- 214.07 Nondiscrimination by City Contractors.
- 214.08 Discriminatory Effects.
- 214.09 Exceptions.
- 214.10 Information and Investigation.
- 214.11 Conciliation Agreements.
- 214.12 Injunctions.
- 214.13 Prosecution.
- 214.14 Penalties.

CROSS REFERENCES

Elliott-Larsen Civil Rights Act — MCLA § 37.2101 et seq.

Revised Judicature Act of 1961 — See MCLA § 600.101 et seq.

214.01. Intent, Purpose and Construction.

- (a) It is the intent of the City of Battle Creek 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 his or her 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 chapter shall not be deemed preempted by federal or state law, but are intended to supplement state and federal civil rights law prohibiting discrimination in the areas of employment, public accommodations, and housing. Provided, however, this chapter 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 chapter shall require preferential treatment of any person or group on the basis of sexual orientation or gender identity.

214.02. Definitions.

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

- (a) “Affected Person” means a person who has filed a complaint pursuant to below section 214.10(a) AND who the City Manager, or his or her designee, has entered into a Conciliation Agreement pursuant to below section 214.11 as a result of the affected person’s complaint.
- (b) “Age” means chronological age.
- (c) “City Manager” means the City Manager of the City of Battle Creek.
- (d) “Contractor” means 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.
- (e) “Discriminate” means 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:

(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.

(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.

(f) "Employer" means any person employing one or more persons.

(g) "Employment Agency" means a person who undertakes to procure employees for an employer or procures opportunities for individuals to be employed by an employer.

(h) "Family Status" means the state of being in a family.

(i) "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.

(j) "Gender Identity" means 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.

(k) "Housing Facility" means 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.

(l) "Labor Organization" means 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.

(m) “Marital Status” means the state of being married, never married, divorced, or widowed.

(n) “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.

(o) “Person” includes an individual, association, partnership, agency, organization, or corporation, public or private, including all employees thereof as well as any natural person. The term, when applied to partnerships, associations, and corporations, includes members and officers.

(p) “Physical or Mental Disability” means 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 alcoholic liquor by an individual.

(q) “Place of Public Accommodation” means 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.

(r) “Religious Organization” means an organization, church, group, or body of communicants that is 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.

(s) “Sexual Orientation” means 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.

214.03 Discriminatory Housing Practices.

Except as otherwise provided in this chapter:

(a) No person shall discriminate in leasing, selling or otherwise making 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 or national origin.
- (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.

214.04 Discriminatory Public Accommodation Practices.

- (a) Except as otherwise provided in this chapter, 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 chapter permits or requires access to any place of public accommodation for the purpose or intent of engaging in criminal conduct.
- (c) Nothing in this chapter shall require the construction or provision of unisex, single-user restrooms, changing rooms, locker rooms, or shower facilities.

214.05 Discriminatory Employment Practices.

Except as otherwise provided in this chapter:

- (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.

214.06 Other Prohibited Practices.

- (a) No person shall adopt, enforce or employ any policy or requirement, or 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 chapter 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 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.

(e) No person shall conspire with, assist, coerce or request another person to discriminate in any manner prohibited by this chapter.

214.07 Nondiscrimination by City Contractors.

(a) All contractors proposing to do business with the City of Battle Creek 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 chapter.

(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.

214.08 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 identity 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.

214.09 Exceptions.

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

- (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) For the owner of an owner-occupied, one-family or two-family dwelling, or 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.
- (c) To limit occupancy in a housing project or to provide public accommodations or employment privileges or assistance to persons of low income, persons over 55 years of age or disabled persons.
- (d) To engage in a bona fide effort to establish an affirmative action program to improve opportunities in employment for minorities and women consistent with applicable state and federal law.
- (e) To discriminate based on a person's age when such discrimination is required by state, federal, or local law.
- (f) To refuse to enter into a contract with an unemancipated minor.
- (g) To refuse to admit to a place of public accommodation serving alcoholic beverages a person under the legal age for purchasing alcoholic beverages.
- (h) 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.
- (i) For an educational institution to limit the use of its facilities to those affiliated with such institution.
- (j) To provide discounts on products or service to students, or on the basis of age.
- (k) To discriminate in any arrangement for the shared ownership, lease or residency of a dwelling unit.

- (l) 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.
- (m) To restrict participation in an instructional program, athletic event or on an athletic team on the basis of age, sex, height, or weight.
- (n) To restrict membership in a private club that is not open to the public except to the extent that private clubs which permit members to invite guests on the premises are not exempted as it concerns a member's guest.
- (o) To the employment of an individual by one's family.
- (p) To the use of marital status or family status limitations in a health or pension plan if such limitations conform to federal and state laws and regulations.
- (q) 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.

214.10 Information and Investigation.

- (a) Any person claiming a violation of this chapter 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 chapter.
- (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 chapter. If said person does not comply with such request, the City Attorney may apply to the Calhoun 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 filed in accordance with this section 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 chapter occurred, the City Manager, or his or her designee, shall attempt to resolve the matter by conciliation and persuasion or refer the complaint to the City Attorney for prosecution in a court of competent jurisdiction.

214.11 Conciliation Agreements.

In cases involving alleged violations of this chapter, the City Manager, or his or her designee, 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 violations of this chapter.

214.12 Injunctions.

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

214.13 Prosecution.

(a) Prosecution for violation of this chapter may only be initiated by complaint of the affected person due to the alleged violation of a conciliation agreement made pursuant to above Section 214.11, or by the City Manager, or his or her designee, on the basis of an investigation undertaken by the City Manager, or his or her designee.

(b) Violation of this chapter shall be prosecuted by the City Attorney as a municipal civil infraction pursuant to the provisions of the Revised Judicature Act of 1961, MCLA 600.101 et seq.

214.14 Penalties.

(a) A violation of any provision of this chapter is a municipal civil infraction punishable by a fine of not more than \$500, 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.

(b) Each day upon which a violation occurs shall constitute a separate and new violation.

(c) 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.

(d) 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 person for the prevention or correction of discrimination.