

ORDINANCE NO. ORD-22-09

First Reading: April 18, 2022
Public Hearing: May 5, 2022

Approved:
Published:
Effective:

NON-DISCRIMINATION

An Ordinance to Amend Chapter 112 (Non-Discrimination), Sections 9:150, 9:151, 9:156, and 9:159, Title IX of the Code of the City of Ann Arbor To Update Definitions of Gender Expression, Gender Identity, and Sexual Orientation; Reorder Definitions; Add Definition of Religion to Include Prohibition Against Religious-Based Hair and Head Coverings Discrimination; and To Remove Requirement that Complaint be Filed within 180 Days.

The City of Ann Arbor Ordains:

Section 1. That Sections 9:150, 9:151, 9:156, and 9:159 of Chapter 112 of Title IX of the Code of the City of Ann Arbor be amended to read as follows:

9:150. Intent.

It is the intent of the city that no individual be denied equal protection of the laws; nor shall any individual be denied the enjoyment of his or her civil or political rights or be discriminated against because of actual or perceived age, arrest record, color, disability, educational association, ethnicity, familial status, family responsibilities, gender expression, gender identity, genetic information, height, HIV status, marital status, national origin, political beliefs, race, ethnicity, religion, sex, sexual orientation, source of income, veteran status, victim of domestic violence or stalking, or weight.

9:151. Definitions.

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

- (1) *Age*. Chronological age.
- (2) *Arrest record*. Information indicating that an individual has been questioned, apprehended, taken into custody or detention, held for investigation, arrested, charged with, indicted or tried for any felony, misdemeanor, or other offense by any law enforcement or military authority.
- (3) *Bona fide occupational qualification*. An otherwise protected characteristic which is reasonably necessary to the normal performance of the particular position in a particular business or enterprise.
- (4) *Contractor*. As defined in Title I, Section 1:312(5) of this Code.

- (5) *Disability*. A determinable physical or mental characteristic of an individual, which may result from disease, injury, congenital condition of birth, or functional disorder, if the characteristic:
- (a) for purposes of employment, substantially limits 1 or more of the major life activities of that individual and is unrelated to the individual's ability to perform the duties of a particular job or position or substantially limits 1 or more major life activities of that individual and is unrelated to the individual's qualifications for employment or promotion;
 - (b) for purposes of public accommodations, is unrelated to the individual's ability to utilize and benefit from a place of public accommodation or public service;
 - (c) for purposes of housing, substantially limits 1 or more of that individual's major life activities and is unrelated to the individual's ability to acquire, rent or maintain property.

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

Disability does not include a determinable physical or mental characteristic caused by the current illegal use of a controlled substance by that individual. It also does not include a determinable physical or mental characteristic caused by the current use of alcoholic liquor by that individual, if that physical or mental characteristic negatively impacts that individual's ability to perform the duties of his or her job.

- (6) *Discriminate*. To make a decision, offer to make a decision or refrain from making a decision based in whole or in part on an individual's or his or her relatives' or associates' actual or perceived age, arrest record, color, disability, educational association, ethnicity, familial status, family responsibilities, gender expression, gender identity, genetic information, height, HIV status, marital status, national origin, political beliefs, race, ethnicity, religion, sex, sexual orientation, source of income, veteran status, victim of domestic violence or stalking, or weight.

Discrimination includes the use of facially neutral practices that have an adverse impact on members of a protected class (See 9:156 of this chapter).

Discrimination also includes harassment based upon any protected class, including, but not limited to sexual harassment.

- (7) *Educational association.* The fact of being enrolled or not enrolled at any educational institution.
- (8) *Ethnicity.* A heritage which is socially distinguishable from other groups that has developed its own subculture which can include nationality, religion and language.
- (9) *Employer.* A person or agent of that person, who, for compensation, employs 3 or more individuals.
- (10) *Familial status.* One or more children under the age of 18 residing with a parent or other individual having, or in the process of securing, legal custody of the child or children; or 1 or more children under the age of 18 residing with the designee of the parent or other individual having or securing custody, with the written permission of the parent or other individual.
- (11) *Family responsibilities.* Being a provider of care and/or support, or being perceived to be a provider of care and/or support for a family member.
- (12) *Gender expression.* An individual's actual or perceived gender-related appearance, expression, or behavior, —gender-based appearance, expression or behavior of an individual, regardless of the individual's assigned sex at birth.
- (13) *Gender identity.* An individual's internal sense of their own sex and a defining component of sex. Sex includes, but is not limited to, an individual's gender, gender identity, and gender expression.
- (14) *Genetic information.* Information about an individual's genetic tests and the genetic tests of an individual's family members (e.g., family medical history), and the manifestation of a disease or disorder in family members of such individual. A genetic test is an analysis of DNA, RNA, chromosomes, proteins, or metabolites that detects genotypes, mutations or chromosomal changes.
- (15) *Harassment.* A form of discrimination in which conduct is based upon an individual's membership in a protected class which:
 - (a) Unreasonably interferes with that individual's work, or ability to utilize and benefit from a place of public accommodation or public service, or ability to obtain or maintain housing; and/or
 - (b) Creates a hostile environment at work, at a place of public accommodation or public service, or where that individual lives.
- (16) *HIV status.* The state of blood sero-positivity or sero-negativity with respect to the human immunodeficiency virus (HIV), including, but not limited to, diagnoses of acquired immunodeficiency syndrome (AIDS).

- (17) *Housing facility.* Any dwelling unit or facility in which it is intended individuals regularly will sleep and keep personal belongings including, but not limited to, a house, apartment, rooming house, housing cooperative, homeless shelter, hotel, motel, tourist home, retirement home or nursing home.
- (18) *Individual.* A human being, as distinguished from a person, as defined under this Code.
- (19) *Marital status.* The state of being married, unmarried, divorced or widowed.
- (20) *Minority.* An individual who is Asian, Black or African American, Hispanic or Latino, Native Hawaiian or Other Pacific Islander, Native American, or Alaskan native.
- (21) *Perceived.* Refers to the perception of the person who acts and not to the perception of the individual for or against whom the action is taken.
- (22) *Person.* As defined in Title I, Section 1.8 of this Code.
- (23) *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.
- (24) *Political beliefs.* One's opinion, whether or not manifested in speech or association, concerning the social, economic, and governmental structure of society and its institutions. This chapter shall cover all political beliefs, the consideration of which is not preempted by state, federal or local law. With regard to employment, an individual's political beliefs that interfere or threaten to interfere with his or her job performance are specifically excluded from this protection.
- (25) *Race.* Inclusive of traits historically associated with race, including, but not limited to, hair texture and protective hairstyles. For purposes of this definition, "protective hairstyles" includes, but is not limited to, such hairstyles as braids, locks, twists, and headwraps.
- (25)(26) *Religion.* Includes, but is not limited to, hairstyles and the use of head coverings associated with an individual's religious beliefs, observance, or practice, unless they cannot reasonably be accommodated because of bona fide health, safety, or security concerns.
- (26)(27) *Sex.* Includes, but is not limited to, an individual's gender, gender identity, gender expression, pregnancy, childbirth, and medical conditions related to pregnancy or childbirth. An individual's sex shall be defined by

that individual's gender identity; and use and/or occupancy of, access to and/or participation in sex-segregated facilities and/or entities shall be granted on that basis. Such sex-segregated facilities and/or entities include, but are not limited to, dwellings, housing, public accommodations, lavatories, locker rooms, instructional programs, athletic events and athletic teams.

~~(27)~~(28) Sexual harassment. A type of sex discrimination. 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.

~~(28)~~(29) Sexual orientation. An individual's emotional, romantic, and/or sexual attractions, or the absence thereof, to people including but not limited to actual or perceived homosexuality, heterosexuality, pansexuality, or bisexuality. Sexual orientation also ~~refers to a person's~~means an individual's sense of identity based on those attractions, related behaviors, and membership in a community of others who share those attractions.

~~(29)~~(30) Source of income. Any lawful source of money paid directly to an individual or family or indirectly on behalf of an individual or family, including, but not limited to:

- (a) Money derived from any lawful profession or occupation.
- (b) Money derived from any contract, agreement, loan, or settlement; from any court order, such as court-ordered child support or alimony; from any gift or bequest; or from any annuity or life insurance policy.
- (c) Money derived from any benefit or subsidy program, including, but not limited to, any housing assistance, such as Housing Choice Vouchers, Veterans Affairs Supportive Housing (VASH) Vouchers, or any other form of housing assistance payment or credit whether or not paid or attributed directly to a landlord; public assistance; emergency rental assistance; veterans benefit; Social Security or

other retirement program; supplemental security income; or other program administered by any federal, state, or local agency or nonprofit entity. Any monthly housing assistance administered by any federal, state, or local agency or nonprofit entity shall be treated as income in the amount of 3× the value of that monthly rental assistance.

~~(30)~~(31) Veteran status. Having served in any unit of the United States Armed Forces or their reserve components, including the National Guard and the Coast Guard.

~~(31)~~(32) Victim of domestic violence or stalking. An individual who is a victim of domestic violence as defined in MCL § 400.1501 or a victim of stalking as defined in MCL § 750.411h and § 750.411i.

9:156. 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 age, arrest record, color, disability, educational association, ethnicity, familial status, family responsibilities, gender expression, gender identity, genetic information, height, HIV status, marital status, national origin, political beliefs, race, ethnicity, religion, sex, sexual orientation, source of income, veteran status, victim of domestic violence or stalking, or weight for an individual 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 objection to such a person by neighbors, customers or other persons.

9:159. Complaint procedure.

~~(1) — If any individual has a complaint alleging a violation of this chapter, he/she has 180 calendar days from the date of the individual's knowledge of the allegedly discriminatory action or 180 calendar days from the date when the individual should have known of the alleged discriminatory action to file a complaint with the city's Human Rights Commission. If an individual fails to file a complaint alleging a violation of this chapter within the specified time frame, the complaint will not be considered by the Human Rights Commission.~~A complaint about a violation of this chapter should be made to the Ann Arbor Human Rights Commission. The complaint may be submitted in person, by telephone, by mail, or electronically.

~~(2) — The complaint should be made in writing to the Human Rights Commission. The complaint may be filed in person, by e-mail, or by mail. The complaint must contain information about the alleged discrimination, such as name, address, phone number of the complainant and location, date and description of the alleged violation of this chapter.~~

~~(3)~~(1)

~~(4)~~(2) Upon receipt, the Human Rights Commission will review the complaint, provide a ~~copy~~ notice of the complaint to the City Attorney's Office, communicate with the complainant, and take appropriate action with respect to the matter, including, but not limited to:

~~(a)~~ Referring the complainant to other local, state or federal entities for investigation and remedy;

~~(a)~~ Informally mediating Mediating the matter between the involved parties;

(b) Referring the complainant to other local, state or federal entities for investigation and remedy;

(c) Referring the complaint to the City Attorney for further investigation and action pursuant to this chapter;

(d) Dismissing the complaint, after review with the City Attorney, if the allegations do not constitute a violation of this chapter.

~~(5)~~(3) With respect to complaints filed by current city employees, the Human Rights Commission will refer such employees to any applicable processes contained in collective bargaining agreements and/or the City Human Resources Policies and Procedures. If a current employee has exhausted any such processes, he/she may file a complaint with the Human Rights Commission in accordance with subparagraphs (1) through (3) of this section.

~~(6)~~(4) The Human Rights Commission will take action on the complaint within 90 days of receipt of the complaint. If additional time is necessary, the Human Rights Commission will notify the complainant of the need for additional time. All communications with the complainant regarding actions taken or additional time necessary will be in writing, with a copy to the City Attorney.

~~(7)~~(5) The City Attorney will notify the Human Rights Commission in writing of actions taken by the City Attorney's Office on complaints referred to that office by the Human Rights Commission.

~~(8)~~(6) All complaints received by the Human Rights Commission and responses from the Human Rights Commission will be retained by the City of Ann Arbor for at least 3 years.

~~(9)~~(7) The Human Rights Commission will provide an annual report to City Council regarding the complaints received and actions taken.

~~(10)~~(8) _____ No individual shall provide false information to any authorized individual investigating a complaint regarding a violation of this chapter.

~~(11)~~(9) _____ For an investigation, the City Attorney 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.

Section 2: In the event any court of competent jurisdiction shall hold any provision of this Ordinance invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision thereof.

Section 3: This Ordinance shall take effect ten days after passage and publication.