

[Part of Ordinance 83-6 - establishing BHRC]

BLOOMINGTON MUNICIPAL CODE

BLOOMINGTON HUMAN RIGHTS ORDINANCE

Chapter 2.21.010

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2.21.010 Human Rights Commission--Establishment. There is hereby created within the Department of Law a Human Rights Commission pursuant to Section 2.21.020. (Ord. 83-6 §2(part), 1983).

2.21.020 Public policy and purpose. It is the policy of the

city that it does not discriminate in the provision or implementation of its programs and services on the basis of race, religion, color, sex, national origin, ancestry, sexual orientation or disability. It is the public policy of the city to provide all citizens equal opportunity for education, employment, access to public accommodations and acquisition through purchase or rental of real property including but not limited to housing, and to eliminate segregation or separation based on race, religion, color, sex, national origin, ancestry, sexual orientation or disability, since such segregation is an impediment to equal opportunity. Equal education and employment opportunities and equal access to and use of public accommodations and equal opportunity for acquisition of real property are hereby declared to be civil rights.

The practice of denying these rights to persons because of race, religion, color, sex, national origin, ancestry, sexual orientation, or disability is contrary to the principles of freedom and equality of opportunity and is a burden to the objectives of the public policy of the city, and shall be considered as discriminatory practices. The promotion of equal opportunity without regard to race, religion, color, sex, national origin, ancestry, sexual orientation or disability is the purpose of this Section.

It is also the public policy of the city to protect employers,

labor organizations, employment agencies, property owners, real estate brokers, builders and lending institutions from unfounded charges of discrimination.

It is hereby declared to be contrary to the public policy of the city and an unlawful practice to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry into the neighborhood of a person or persons of a particular race, religion, color, sex, national origin, ancestry, sexual orientation or disability. (Ord. 02-02 §1, 2002, Ord. 98-22 §1, 1998, Ord. 83-6 §2(part), 1983; Ord. 93-28, 1993).

2.21.030 Definitions. As used in this chapter unless the context clearly requires otherwise:

(1) "Acquisition of real property" means the sale, rental lease, sublease, construction or financing, including negotiations and other activities or procedures incident thereto, of:

(a) Any building, structure, apartment, single room or suite of rooms or other portion of a building, occupied as or designed or intended for occupancy as living quarters; or

(b) Any building, structure, or portion thereof, or any improved or unimproved land utilized, or designed or intended for utilization, for business, commercial, or industrial or agricultural purposes; or

(c) Any vacant or unimproved land offered for sale or lease for any purpose whatsoever.

(2) "Affirmative Action" means those acts which the Commission deems necessary to assure compliance with the city human rights ordinance.

(3) "Ancestry" refers to both the country from which a person's ancestors came and the citizenship of a person's ancestors.

(4) "Commission" means the human rights commission hereinafter created.

(5) "Commission attorney" means the city attorney, or such assistants of the city attorney as may be assigned to the commission, or such other attorney as may be engaged by the commission or voluntarily lend his services to the commission.

(6) "Compensation" and "compensatory damages" mean actual damages, except that damages to be paid as a result of discriminatory practices relating to employment shall be limited to lost wages, salaries, commissions or fringe benefits.

(7) "Complainant" means any individual charging on his own behalf to have been personally aggrieved by a discriminatory practice or the commission attorney or a commissioner to the Bloomington human rights commission charging that a discriminatory practice was committed against a person, other than himself, or a class of people in order to vindicate the public policy of the state as defined in Indiana Code 22-9-1-2, and the public policy of the city as defined in Section 2.21.020.

(8) "Complaint" means any written grievance filed by a complainant with the legal department. The original shall be signed and verified before a notary public or another person duly authorized by law to administer oaths and take acknowledgments. Notarial service shall be furnished by the legal department without charge.

(9) "Consent Agreement" means a formal agreement entered into in lieu of adjudication.

(10) "Discriminatory practice" means the exclusion of a person by another person from equal opportunities because of race, religion, color, sex, national origin, ancestry, sexual orientation or disability; or a system which excludes persons from equal opportunities because of race, religion, color, sex, national origin, ancestry, sexual orientation, or disability or the promotion or assistance of segregation or separation in any manner on the basis of the above categories; provided, it shall not be a discriminatory practice for an employment agency to refer for employment any individual, or for a joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in such program on the basis of his religion, sex or national origin in those particular instances where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise;

further provided, that it shall not be discriminatory practice for a person to refuse to rent for occupancy as living quarters any space in owner occupied multiple dwelling structure on the basis of sex; provided, further, it shall not be a discriminatory practice for an employer to fail to employ or retain as an employee any person who because of a disability is physically or otherwise unable to efficiently and safely perform, at the standards set by the employer, the duties required by that job; provided, further, it shall not be a discriminatory practice to fail to promote or transfer a person with a disability to another job or occupation after he or she is employed unless, prior to such transfer, such person with a disability is by training or experience qualified for such job or occupation;

(11) "Educational institution" includes all public and private schools and training centers, except that the term does not include any state agency as defined in subsection (24) of this section.

(12) "Employee" includes any person employed by another for wages or salary; provided, that it shall not include any individual employed by his parents, spouse or child,

(13) "Employer" includes any person employing six or more employees within the city, except that the term does not include not-for-profit corporation or association organized exclusively for fraternal or religious purposes; nor any school, educational or

charitable religious institution owned or conducted by, or affiliated with, a church or religious institution; nor any exclusively social club, corporation or association that is not organized for profit; nor the city or any department thereof; nor any state agency as defined in subsection (24) of this section.

(14) "Employment Agency" includes any person undertaking with or without compensation to procure, recruit, refer, or place employees.

(15) "Disabled" means:

(A) With respect to a person:

(i) a physical or mental impairment that substantially limits one or more of the person's major life activities;

(ii) a record of having an impairment described in subdivision (i); or

(iii) being regarded as having an impairment described in subsection (i).

(B) The term "disabled" does not include the following: current illegal use of or addiction to a controlled substance (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802)), homosexuality, bisexuality, transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, compulsive gambling, kleptomania, pyromania or psychoactive substance use disorders

resulting from current illegal use of drugs.

(16) "Labor organization" includes any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or for mutual aid or protection in relation to employment.

(17) "Lending institution" means any bank, building and loan association, insurance company, or other corporation, association, firm or enterprise whose business consists in whole or part in making or guaranteeing loans secured by real estate or an interest therein.

(18) "National origin" refers to both the country from which a person came and the citizenship of the person.

(19) "Owner-occupied multiple-dwelling structure" includes only structures in which the owner of the premises actually resides, containing not more than three separate dwelling units, apartments, rooms or portions of the building designed or intended for occupancy as living quarters.

(20) "Person" includes one or more individuals, partnerships, associations, organizations, labor organizations, corporations, cooperatives, legal representatives, trustees in bankruptcy, trustees, receivers, any subdivisions of the state, and other organized groups of persons.

(21) "Public accommodation" means any establishment which

offers its services, facilities, or goods to the general public.

(22) "Respondent" means one or more persons against whom a complaint is filed under this chapter, and whom the complainant alleges has committed or is committing a discriminatory practice.

(23) "Sex" as it is applied to segregation or separation in this chapter, shall apply to all types of employment, education, public accommodations, and housing; provided, that it shall not be a discriminatory practice to maintain separate rest rooms or dressing rooms; and that it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify or refer for employment any individual, for a labor organization to classify its members or to classify or refer for employment any individual, or for any employer labor organization, or joint labor management committee controlling apprenticeship or other training or retraining programs to admit or employ any other individual in any such program on the basis of sex in those certain instances where sex is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise; and that it shall not be a discriminatory practice for a private or religious educational institution to continue to maintain and enforce a policy of admitting students of one sex only.

(24) "Sexual orientation" means an individual's identity or practice as a lesbian woman, gay male, bisexual person or

heterosexual person, whether actual or perceived.

(25) "State agency" means every office, officer, board, commission, council, department, division, bureau, committee, fund, agency, and without limitation by reason of any enumeration herein, every other instrumentality of the state of Indiana, every hospital, every penal institution and every other institutional enterprise and activity of the state of Indiana, wherever located; the universities supported in whole or in part by state funds; and the judicial department of the state of Indiana. "State agency" does not mean counties, county departments of public welfare, cities, towns, townships, school cities, school towns, school townships, school districts or other municipal corporations, political subdivisions, or units of local government. (Ord. 85-67 §2, 1985; Ord. 83-6 §2(part), 1983; Ord. 93-28 1993; Ord. 98.22 §§ 2,3, 1998).

2.21.040 Appointments. The seven members of the Human Rights Commission shall be appointed four by the Mayor, three by the Common Council. (Ord. 83-6 §2(part), 1983).

2.21.050 Qualifications. Members of the Human Rights Commission shall be representative of the community and shall be city residents. (Ord. 83-6 §2(part), 1983).

2.21.060 Rules and regulations. The Commission may adopt rules and regulations, both procedural and substantive, to effectuate the purpose of this chapter and to make more specific

the procedures deemed necessary for orderly and equitable compliance with this section.

New rules, regulations, and guidelines may be adopted by the commission after a public hearing by a majority vote of the commission.

The rules, regulations, and guidelines of the commission shall be available to the public at the office of the legal department. (Ord. 83-6 §2(part), 1983).

2.21.070 Powers and duties. The commission shall have the following powers and duties:

(1) To create subcommittees and advisory committees as in its judgment will aid in effectuating the purpose of this section.

(2) To issue such publications and such results of investigation and research as in its judgment will tend to minimize or eliminate discrimination because of race, religion, color, sex, national origin, ancestry or disability.

(A) To determine jointly with the legal department whether probable cause exists to believe that discrimination in violation of Bloomington Municipal Code Section 2.21.010 et seq. occurred. A probable cause commissioner shall be assigned to each complaint filed on the date it is filed and shall participate jointly with the legal department and assist in the investigation of the complaint. The legal department shall make a written recommendation of cause or no cause setting forth relevant facts

and applicable legal authority and submit it to the designated probable cause commissioner. The commissioner shall review the legal department's recommended finding, and shall make a written determination of cause or no cause setting forth the relevant facts and applicable law. The probable cause commissioner shall follow applicable legal standards as set forth by the legal department in making the determination.

(3) To schedule complaints for public hearings upon a determination of probable cause. When the recommendation after the investigation is no probable cause, the complainant shall be furnished a copy of the findings of fact and recommendations and shall be given ten days to make a written request, with the reasons therefore, to the chairperson of the commission for review of the finding. Upon the receipt of the request for review, the chairperson or their designee shall review the request and the decision of the reviewing commissioner regarding probable cause shall be final. Whenever a commissioner reviews a decision at the request of a complainant, such commissioner shall be disqualified from any further participation in that case, except as a witness at a public hearing on the complaint. Complaints of discrimination shall be received and investigated by the legal department. To be acceptable to the legal department, a complaint shall be sufficiently complete so as to reflect properly the name and address of the complainant; the name and address of respondent

against whom the complaint is made; the alleged discriminatory practice and a statement of particulars thereof; the date or dates and places of the alleged discriminatory practice; if it is of a continuing nature, the dates between which said continuing acts of discrimination are alleged to have occurred; and a statement as to any other action, civil or criminal, instituted in any other form based upon the same grievance as is alleged in the complaint; together with a statement as to the status or disposition of such other action. No complaint shall be valid unless filed within one hundred and eighty days from the occurrence of the alleged discriminatory practice, or from the date of the termination of a published and meaningful grievance procedure provided by a respondent employer or labor union; provided, that complaints filed only with the Equal Employment Opportunity Commission shall be deemed to have been filed simultaneously with the legal department for purposes of measuring the one-hundred-and-eighty-day limitation, as long as the complaint is otherwise within the legal department's jurisdiction; provided further, that any person who files a complaint with the Indiana Civil Rights Commission shall have no recourse to the legal department concerning any of the matters alleged in such complaint; provided, further, that the legal department shall have no jurisdiction over the state or any of its agencies, or over the city or any of its departments. After a complaint is scheduled for a public hearing, the legal department

shall make reasonable efforts to conciliate all issues raised during the investigation of the case.

(4) To prevent any person from discharging, expelling, or otherwise discriminating against any other person because he filed a complaint or testified in any hearing before the commission or in any way assisted in any matter under investigation.

(5) To issue a temporary emergency order against any person requiring such person to do an act preserving the possibility of a remedy for a complaint or to refrain from doing an act damaging the possibility of a remedy during the investigation of the complaint; provided, however:

(a) That no emergency order shall be issued unless a time and place for hearing on the temporary order is designated in the order;

(b) That the hearing on the temporary emergency order shall be held within ten days following the issuance of the temporary order, unless contained by the commission at the request of the respondent. At such hearing the complainant shall show that a failure to continue the temporary order would damage his remedy. The commission shall thereupon weigh the comparative hardship to the complainant and respondent and issue a decision continuing or terminating the temporary emergency order, pending final disposition of the complaint. The respondent may waive said hearing without prejudice to his defense of the matters charged in

the complaint, in which case the temporary order shall remain in effect pending final disposition of the complaint;

(c) The commission may by rule provide for issuance of its temporary order by a majority of the commission, and it may compel compliance with any such temporary order by bringing in any circuit or superior court for prohibitory or mandatory injunction upon showing that such person is subject to the court's jurisdiction, resides or transacts business within the county in which the proceeding is brought, and that such injunction is necessary to protect the complainant's rights under this chapter until his complaint is resolved through conciliation or public hearing.

(6) To reduce the terms of conciliation agreed to by the parties in writing, to be called a consent agreement, which the parties and a majority of the commissioners shall sign. When so signed, the consent agreement shall have the same effect as a cease and desist order pursuant to subsection (8) of this section. If the commission determines that a party to the consent agreement is not complying with it, the commission may obtain enforcement of the consent agreement in a circuit or superior court upon showing that the party is not complying with the consent agreement, and the party is subject to the commission's jurisdiction, and resides or transacts business within the county in which the petition for enforcement is brought.

(7) To hold hearings, subpoena witnesses, compel their attendance, administer oaths, take testimony of any person under oath and require the production for examination of all books and papers relating to any matter under investigation or in question before the commission. The commission may make rules governing the issuance of subpoenas by individual commissioners. Contumacy or refusal to obey a subpoena or temporary emergency order issued pursuant to this section shall be a breach of this chapter and such person shall be liable to a penalty therefore, if adjudged by the circuit or superior court, of the payment of a penalty not to exceed three hundred dollars. Each penalty shall be deposited in the general fund of the city; provided, however, that the payment of such penalty by a party shall not impair the commission's ability to grant affirmative relief and compensatory damages to the complainant, should justice so require.

(8) To state its findings of fact after hearing which statement shall be made in a written opinion containing both the findings of fact and the principles of law applied. All written opinions shall be compiled and maintained as public record and, in making decisions, the commission shall give due consideration to its prior decisions which may be applicable. If a majority of the commissioners who hear the case finds that a person has engaged in unlawful discriminatory practice, the commission shall cause to be served on the person an order requiring the person to cease and

desist from the unlawful discriminatory practice and requiring such person to take further affirmative action necessary to effectuate the purposes of this section.

If unlawful discrimination is found in the area of employment, an order shall be issued requiring the respondent to take such affirmative action including but not limited to hiring, reinstatement, and upgrading of employees or people deprived of employment, with or without compensatory damages to which the complainants would have been entitled had they not been deprived of equal opportunity.

If unlawful discrimination is found in the area of housing or acquisition of real property, an order may be issued requiring a respondent to take affirmative action, including but not limited to renting, selling, or leasing to a person deprived of equal opportunity. Compensation for the denial of equal opportunity shall be allowed within the discretion of the commission.

If unlawful discrimination is found in the area of public accommodations, an order shall be issued requiring respondent to take affirmative action, including but not limited to providing services, goods, or access to property, reinstatement to membership, posting of notice that a facility is a public accommodation, with or without compensatory damages for a complainant's being denied equal opportunity.

If unlawful discrimination is found in the area of education,

an order may be issued requiring a respondent to take affirmative action including but not limited to a review and revision of school boundaries, revision of teaching aids, and materials, human relations training for personnel recruitment of minority people for professional staff, with or without compensatory damages to which the complainant would have been entitled except for the denial of equal opportunity.

If upon all the evidence, the commission finds that person has not engaged in any such unlawful practice or violation of this section, the commission shall state its findings of fact and shall issue and cause to be served on the complainant an order dismissing the said complaint as to such person.

Judicial review of such cease and desist order, or other final order, or other affirmative action or damages as referred to in this chapter may be obtained by filing in the county circuit or superior courts. The scope of review shall be in accordance with the provisions set out in Indiana Code 4.21.5-1 et seq. If no proceeding to obtain judicial review is instituted within thirty days from the receipt of notice by a person that such order has been made by the commission, the commission, if it determines that the person upon whom the cease and desist order has been served is not complying or is making no effort to comply, may obtain a decree of a court for the enforcement of such order in circuit or superior

court upon showing that such person is subject to the commission's jurisdiction and resides or transacts business within the county in which the petition for enforcement is brought, or may request the city attorney, commission attorney, or attorney representing the complainant to seek enforcement.

Affirmative Action by City Contractors. All contractors doing business with the city, except those specifically exempted by regulations promulgated by the human rights commission and approved by the common council 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 religion, race, color, sex, national origin, ancestry or disability. Affirmative action shall include but not be limited to the issuance of a statement of policy regarding equal employment and its communication to all personnel involved in recruitment, hiring, training, assignment, and promotion; notification of all employment sources of company policy and active efforts to review the qualifications of all applicants regardless of race, religion, color, sex, national origin, ancestry or disability; recruiting in the minority group community for employees; and establishing an internal system of reporting concerning equal employment, recruiting, hiring, training, upgrading and the like.

Each such contractor shall submit to the human rights commission a written proposal concerning the affirmative action it proposes to take, which proposal must be approved prior to its entering a contract with the city. Said proposal shall be limited to measures similar to those which the city is required to take in its affirmative action with regard to its own employees, as

established by the mayor's office and as specified by resolution of the common council.

All contracting agencies of the city or any department thereof shall include in all contracts hereafter negotiated or renegotiated by them a provision obligating the contractor to take affirmative action to insure that the 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, religion, color, sex, national origin, ancestry or disability.

Such contracts shall provide further that breach of the obligation to take affirmative action shall be a material breach of the contract for which the city shall be entitled, at its option:

(a) To cancel, terminate, or suspend the contract in whole or in part;

(b) To declare the contractor or vendor ineligible for further city contracts;

(c) To recover liquidated damages of a specified sum. (Ord. 85-67 §§1 and 3, 1985; Ord. 83-6 §2(part), 1983; Ord. 93-28, 1993; Ord. 98-22 §§§ 4,5,6, 1998).

2.21.080 Educational program. In order to eliminate prejudice among the various groups in the city and to further goodwill among such groups, the commission may prepare educational programs designed to emphasize and remedy the denial of equal

opportunity because of a person's race, religion, color, sex, national origin, ancestry, sexual orientation or disability, its harmful effects, and its incompatibility with the principles of equality. (Ord. 83-6 §2(part), 1983; Ord. 93-28, 1993).

2.21.090 Relationship with Civil Rights Commission. The legal department may enter into a working relationship with the Indiana Civil Rights Commission to perpetuate the mutual objectives set forth in this chapter and the Indiana Civil Rights Law. (Ord. 83-6 §2(part), 1983).

2.21.095 Housing Discrimination

This section applies only to cases alleging housing discrimination.

(a) Definitions:

(1) "Familial status" means one or more individuals (who have not obtained the age of eighteen years) being domiciled with a parent or another person having legal custody of such individual(s) or the written permission of such parent or other person. The protections against discrimination on the basis of familial status shall apply to any person who is pregnant or in the process of securing legal custody of any individual who has not attained the age of eighteen years.

(2) "Dwelling" means any building, structure, or part of a building or structure, that is occupied as, or designed or intended for occupancy as, a residence by one or more families;

or any vacant land which is offered for sale or lease for the construction or location of a building or structure or part of a building or structure that is occupied as, or designed or intended for occupancy by one or more families.

(3) "To rent" includes to lease, to sublease, to let or otherwise to grant for consideration the right to occupy the premises not owned by the occupant.

(4) "Discriminatory housing practice" includes:

(A) Practices prohibited by section 2.21.030(10) of this code.

(B) Refusing to rent to an individual or family on the basis of familial status.

(C) Refusing to allow a tenant with a disability, as defined by Section 2.21.030(15), to make reasonable modifications of the rented premises at the tenant's expense if such modifications are necessary to afford the tenant full enjoyment of the premises. The landlord may, where it is reasonable to do so, condition permission for the modification(s) on the tenant's agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. The landlord may require the tenant to acquire any necessary permits and to perform the modifications in a workmanlike standard.

(D) Refusing to make reasonable accommodations in

rules, policies, practices or services, when such accommodations may be necessary to afford a tenant with a disability, as that term is defined by Section 2.21.030(15), equal opportunity to use and enjoy a dwelling. (Ord. 98-22 § 8, 1998).

2.21.097 Housing Discrimination - Exemptions. This section applies only to cases alleging housing discrimination.

(a) Nothing in this section requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

(b) Nothing in this section shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such person. Nor shall anything in this ordinance prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(c) Nothing in this section limits the applicability of any reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

(d) Nothing in this section regarding familial status apply with respect to housing for older persons, as defined below. As used in this section, "housing for older persons" means housing:

(1) Provided under any state or federal program that the Secretary of the Federal Department of Housing and Urban Development designed and operated to assist elderly persons (as defined in the state or federal program); or

(2) Intended for, and solely occupied by, persons sixty-two years of age or older; or

(3) Intended and operated for occupancy by at least one person fifty-five years of age or older per unit if the following requirements are met:

(A) the existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons; and

(B) that at least eighty percent of the units are occupied by at least one person fifty-five years of age or older per unit; and

(C) the publication of, and adherence to,

policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons fifty-five years of age or older.

(e) Nothing in this section applies to the following:

(1) The sale or rental of a single-family house sold or rented by an owner if:

(A) The owner does not

(i) own more than three single-family houses at any one time; or

(ii) own any interest in, nor is there owned or reserved on the owner's behalf, under any express or voluntary agreement, title to, or any right to any part of the proceeds from the sale or rental of more than three single-family houses at any one time; and

(B) The house was sold or rented without the use of the sales or rental facilities or services of a real estate broker, agent or salesperson licensed under state law.

(2) The sale or rental of rooms or units in a dwelling containing living quarters occupied or intended to be occupied by no more than four families living independently of each other if the owner maintains and occupies one of the living quarters as the owner's residence. (Ord. 98-22 § 9, 1998)

2.21.140 Hate Crimes Statistics: The Bloomington Human

Rights Commission may collect data and issue reports on hate crimes in the city. Hate crimes include verbal or physical abuse directed at individuals or groups because of their race, sex, color, disability, age, sexual orientation, ancestry, religion or national origin. (Ord. 98-22 § 10, 1998; Ord. 90-36, 1990)

2.21.150 Complaints of sexual orientation discrimination. In complaints of discrimination on the basis of sexual orientation, the commission's authority shall be limited to voluntary investigations and voluntary mediation. (Ord. 93-28 § 5, 1993).

(passed 9-0)

ORDINANCE 06-07

TO AMEND TITLE 2 OF THE BLOOMINGTON MUNICIPAL CODE ENTITLED
"ADMINISTRATION AND PERSONNEL"

Re: Amending Chapter 2.21 Entitled "Department of Law"
to Include "Gender Identity" as a Protected Class

- Whereas, the City of Bloomington seeks to protect its citizens in the enjoyment of civil rights and to promote mutual understanding and respect among all who live and work within the City; and
- Whereas, prejudice, intolerance and discriminatory practices directly and profoundly threaten the rights and freedom of City of Bloomington residents; and
- Whereas, the City of Bloomington has passed ordinances to protect the civil rights of those who live and work within the City, including the prohibition of discrimination based on sex and sexual orientation; and
- Whereas, despite these protections, there are still citizens who are denied their civil rights because their gender identity, appearance or behavior differs from that traditionally associated with their sex at birth; and
- Whereas, for these reasons, the City of Bloomington Human Rights Commission recommended that the Common Council amend the municipal code in order to include "gender identity" as a protected class and provide for the remediation of those complaints in the same voluntary manner as complaints based upon sexual orientation; and
- Whereas, in *Price Waterhouse v. Hopkins*, the U.S. Supreme Court ruled that sex stereotyping is a form of sex discrimination prohibited by the 1964 Civil Rights Act; and
- Whereas, while the Supreme Court has made this determination, the Court has not ruled on whether discrimination based upon gender identity or sexual orientation are forms of sex discrimination; and
- Whereas, the lower courts disagree whether gender identity discrimination is a form of sex discrimination and no court has held that sexual orientation discrimination is a form of sex discrimination; and
- Whereas, the City looks to interpretations of the 1964 Civil Rights Act in interpreting State and local civil rights law; and
- Whereas, the City of Bloomington intends to provide the greatest level of protection possible to those who are discriminated against based upon either their gender identity or sexual orientation, or both; and
- Whereas, § I.C. 22-9-1-12.1(b) specifically authorizes cities to create ordinances to effectuate within their jurisdiction the State's public policy to provide equal education and employment opportunities and equal access to public conveniences and accommodations, and acquisition through purchase or rental of real property, including but not limited to housing, and to eliminate segregation or separation based solely on race, religion, color, sex, disability, national origin or ancestry;

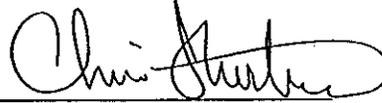
NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, INDIANA:

SECTION 1. Section 2.21.020 entitled "Public policy and purpose" shall be amended by deleting the phrase "race, religion, color, sex, national origin, ancestry, sexual orientation or disability" and replacing it with the phrase "race, religion, color, sex, national origin, ancestry, sexual orientation, gender identity, or disability" wherever it appears in the section.

effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION 11. This ordinance shall be in full force and effect from and after its passage and signing by the Mayor.

PASSED AND ADOPTED by the Common Council of the City of Bloomington on the 19th day of APRIL, 2006.

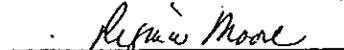


CHRIS STURBAUM, President
Bloomington Common Council

Attest:


REGINA MOORE, Clerk
City of Bloomington

Presented by me to the Mayor of the City of Bloomington, Indiana, this 20th day of APRIL, 2006.


REGINA MOORE, Clerk
City of Bloomington

Signed and approved by me, the Mayor of the City of Bloomington, Indiana, this 20th day of April, 2006.


MARK KRUZAN, Mayor
City of Bloomington

SYNOPSIS

This ordinance is co-sponsored by Councilmembers Sabbagh and Sturbaum. It amends Chapter 2.21 of the Bloomington Municipal Code entitled "Department of Law" to recognize "gender identity" and to protect this class from discriminatory practices. The ordinance does this by adding "gender identity" to the list of protected classes which currently include the following: race, religion, color, sex, national origin, ancestry, sexual orientation, and disability. The term "gender identity" is defined as "a person's actual or perceived gender-related attributes, self-image, appearance, expression or behavior, whether or not such characteristics differ from those traditionally associated with the person's assigned sex at birth." This class will be subject to voluntary remediation in the same manner as a discrimination complaint based upon sexual orientation. However, in regard to both of these classes, the Commission Attorney and complainant may agree to file complaints as forms of sex discrimination if the facts of the complaint and state of the law warrant it. The ordinance also corrects two citations within Section 2.21.030 (Definitions).

Note: This ordinance was amended with the adoption of Am 1 at the Regular Session on April 19, 2006 to correct the title.

Signed copies to:

Legal (5)	clerk 3
code holders	file
city departments	BUC files (2)
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HR Commission	