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ORDINANCE 15-16

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

Re: Amending Chapter 2.21 Entitled "Department of Law"
to Include "Veteran Status" and "Housing Status"
as Protected Classes in the Bloomington Human Rights Ordinance

- 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 State of Indiana amended the Indiana Civil Rights Law in 2014 to protect veterans from discrimination in employment based on their status as a veteran; and
- Whereas, there is reason to believe that people who are perceived to be homeless are discriminated against in employment, public accommodations, housing and education;

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

SECTION 1. Bloomington Municipal Code (BMC) Section 2.21.020, entitled "Public policy and purpose" shall be amended in the following manner:

First, the phrase "race, religion, color, sex, national origin, ancestry, sexual orientation, gender identity or disability" shall be deleted and replaced with the phrase "race, religion, color, sex, national origin, ancestry, sexual orientation, gender identity, disability, housing status or status as a veteran" wherever it appears in the section; and

Second, a new paragraph shall be inserted after the first paragraph in this section which shall read as follows:

It is also against the public policy of the City and a discriminatory practice for an employer to discriminate against a prospective employee on the basis of status as a veteran by:

- (1) refusing to employ an applicant for employment on the basis that the applicant is a veteran of the armed forces of the United States; or
- (2) refusing to employ an applicant for employment on the basis that the applicant is a member of the Indiana National Guard or member of a reserve component.

SECTION 2. BMC Section 2.21.030 (10) shall be amended by adding the terms "housing status" and "status as a veteran" and by deleting outdated language about employing people with disabilities, so that it shall now read:

(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, gender identity, disability, housing status or status as a veteran; or a system which excludes persons from equal opportunities because of race, religion, color, sex, national origin, ancestry, sexual orientation, gender identity

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.

SECTION 3. BMC Section 2.21.030 shall be amended by adding two definitions which shall read as follows:

(27) "Housing status" means the type of housing in which an individual resides, whether publicly or privately owned, or the status of not having a fixed residence, whether actual or perceived.

(28) "Veteran" means

- (a) a veteran of the armed forces of the United States;
- (b) a member of the Indiana National Guard; or
- (c) a member of a reserve component.

SECTION 4. The sixth sentence of BMC Section 2.21.070 (3) shall be amended to accommodate complainants who do not have addresses. To this end, the phrase "and/or other contact information" shall be added between the word "address" and the phrase "of the complainant" so that the sixth sentence shall now read as follows:

To be acceptable to the legal department, a complaint shall be sufficiently complete so as to reflect properly the name and address and/or other contact information 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.

SECTION 5. The second paragraph of BMC Section 2.21.070 (8) shall be amended to better track state law and to that end, shall read as follows:

If unlawful discrimination is found in the area of employment, an order shall be issued requiring the respondent to take such affirmative action the commission may deem necessary to assure justice, 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, meaning wages, salary or commissions. When an employer has been found to have committed a discriminatory practice in employment by failure to employ an applicant on the basis that the applicant is a veteran, the order to restore the veteran's losses may include placing the veteran in the employment position with the employer for which the veteran applied.

SECTION 6. BMC Section 2.21.070 (8) shall be further amended to add all locally-protected categories to the city's affirmative action requirements. To this end, the list containing the following categories (which may not appear in the same order) "religion, race, color, sex, national origin, ancestry or disability" shall be deleted and replaced by the phrase "religion, race, color, sex, national origin, ancestry, disability, sexual orientation, gender identity, housing status, or status as a veteran" whenever the list appears in this section after the heading "Affirmative Action by City Contractors."

replaced with the phrase "religion, race, color, sex, national origin, ancestry, disability, sexual orientation, gender identity, housing status, or status as a veteran" whenever it appears in this section.

SECTION 8. BMC Section 2.21.140, regarding Hate Crimes Statistics, shall be amended to delete the list containing the following categories "race, sex, color, disability, age, sexual orientation, gender identity, ancestry, religion or national origin" and replace it with the phrase "religion, race, color, sex, national origin, ancestry, disability, sexual orientation, gender identity, housing status, or status as a veteran."

SECTION 9. BMC Section 2.21.150 shall be amended in the following manner:

First, the heading shall be amended to read "Complaints of sexual orientation discrimination, gender identity discrimination or housing status discrimination." and this heading shall also be reflected in the table of contents for BMC Chapter 2.21.

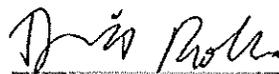
Second, the body of this section shall be amended to read as follows:

In complaints of discrimination on the basis of sexual orientation, gender identity, or both, and in complaints of housing status discrimination, the commission's authority shall typically be limited to voluntary investigations and voluntary mediation. However, the commission's attorney may also, with the consent of the complainant, pursue complaints of sexual orientation, gender identity discrimination, or both, as forms of sex discrimination if warranted by the circumstances and the state of the law.

SECTION 10. If any section, sentence or provision of this ordinance, or the application thereof to any person or circumstances shall be declared invalid, such invalidity shall not affect any of the other sections, sentences, provisions, or applications of this ordinance which can be given effect without the invalid provision or application, and to the 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 by the Common Council of the City of Bloomington, approval of the Mayor, and any promulgation when required by law.

PASSED AND ADOPTED by the Common Council of the City of Bloomington on the 2nd day of September, 2015.



DAVE ROLLO, President
Bloomington Common Council

Attest:



REGINA MOORE, Clerk
City of Bloomington

Presented by me to the Mayor of the City of Bloomington, Indiana, this 8th day of September, 2015.

Regina Moore
REGINA MOORE, Clerk
City of Bloomington

Signed and approved by me, the Mayor of the City of Bloomington, Indiana, this 9th day of SEPTEMBER, 2015.

Mark Kruzan
MARK KRUZAN, Mayor
City of Bloomington

SYNOPSIS

This ordinance is sponsored by Councilmember Granger and co-sponsored by the remainder of the Council. It amends Chapter 2.21 of the Bloomington Municipal Code entitled "Department of Law" to recognize veteran status as a legally-protected category and to recognize housing status as a quasi-protected category, adding both to the list of protected classes which currently include the following: race, religion, color, sex, national origin, ancestry, sexual orientation, disability and gender identity. The term "veteran status" is defined as a "veteran of the armed forces of the United States, a member of the Indiana National Guard, or a member of a reserve component." The term "housing status" is defined as "the type of housing in which an individual resides, whether publicly or privately owned, or the status of not having a fixed residence, whether actual or perceived." The class of housing status will be subject to voluntary remediation in the same manner as a discrimination complaint based upon sexual orientation or gender identity.

The ordinance also expands the list of protected categories in the city's affirmative action requirements for covered contractors to include veteran status, housing status, gender identity and sexual orientation, as well as the current categories: race, religion, color, sex, national origin,

ORDINANCE 15-28

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

Re: Amending Chapter 2.21 Entitled "Department of Law"
to Remove the Voluntary Nature of Investigation and Mediation of
Complaints Based on Sexual Orientation Discrimination
and Gender Identity Discrimination

- WHEREAS, the City of Bloomington (the "City") 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 our community; and
- WHEREAS, prejudice, intolerance, and discriminatory practices directly and profoundly threaten the rights and freedom of Bloomington residents and our imperil our collective well-being; and
- WHEREAS, 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, gender identity, disability, housing status, or status as a veteran. 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, gender identity, disability, housing status, or status as a veteran, since such segregation is an impediment to equal opportunity (Bloomington Municipal Code §2.21.020); and
- WHEREAS, Equal protection of individuals based on sexual orientation and gender identity has been a policy of the City for decades:
- In 1975, sexual orientation was first added to the City's Human Rights Ordinance; however, the provision became void upon a declaration that the Indiana Civil Rights Law in effect at the time was unconstitutional;
 - In 1993, the City added sexual orientation back into the City's Human Rights Ordinance as a quasi-protected class;
 - In 2006, the City added gender identity as a quasi-protected class; and
- WHEREAS, while Bloomington has long afforded protections based on sexual orientation and gender identity, State law has lagged behind; the Indiana Civil Rights Law, I.C. §§ 22-9-1-1 to -17 does not explicitly enumerate "sexual orientation" and "gender identity" as protected categories; however, State law does provide that it is impermissible to discriminate against a person based on "sex;" and
- WHEREAS, operating under the constraints of the Indiana Home Rule Act, I.C. §§ 36-1-3-1 to -9, the Bloomington Municipal Code provides that the Human Rights Commission's authority to pursue complaints of discrimination based on sexual orientation and gender identity is typically limited to voluntary investigation and voluntary mediation; and
- WHEREAS, in 2006, the City amended the Bloomington Municipal Code to make it clear that the Commission's attorney may pursue complaints of discrimination based on sexual orientation and/or gender identity as forms of sex discrimination when

WHEREAS, since 2006, interpretation of laws protecting the rights of those suffering discrimination on the basis of sexual orientation and gender identity has rapidly changed, with some federal courts and administrative agencies holding that sexual orientation and gender identity are forms of sex discrimination, and therefore, entitled to full protection under relevant federal law; and

WHEREAS, the Indiana Supreme Court has held that Indiana courts often look to federal case law for guidance in interpreting the Indiana Civil Rights Law and similar ordinances; while federal interpretations of federal laws are not binding on Indiana courts, such interpretations are persuasive and often given deference by Indiana courts; and

WHEREAS, due to the evolution in case law, the Council and the Mayor wish to extend full protection to the categories of sexual orientation and gender identity, thereby removing the voluntary nature of investigation and mediation of complaints based on these categories; and

WHEREAS, this change, and the City's Human Rights policy *in toto*, serves a compelling governmental interest and is the least restrictive means of furthering this interest; and

WHEREAS, extending full protection to the categories of sexual orientation and gender identity is the right thing to do;

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

SECTION 1. Bloomington Municipal Code 2.21.150, "Complaints of sexual orientation discrimination, gender identity discrimination or housing status discrimination" shall be amended to remove references to "sexual orientation" and "gender identity." The provision shall be amended in the following manner:

First, the heading shall be amended to read "Complaints of housing status discrimination." and this heading shall also be reflected in the table of contents for Bloomington Municipal Code Chapter 2.21.

Second, the body of this section shall be amended to read as follows:

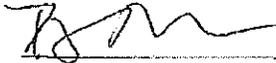
In complaints of discrimination on the basis of housing status discrimination, the commission's authority shall typically be limited to voluntary investigations and voluntary mediation.

SECTION 2. The City's Human Rights policy shall be enforced within the limits provided by statutory and Constitutional law.

SECTION 3. If any section, sentence or provision of this ordinance, or the application thereof to any person or circumstances shall be declared invalid, such invalidity shall not affect any of the other sections, sentences, provisions, or applications of this ordinance which can be given effect without the invalid provision or application, and to the end the provisions of this ordinance are declared to be severable.

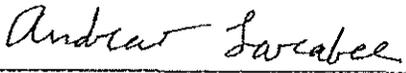
SECTION 4. This ordinance shall be in full force and effect from and after its passage by the Common Council of the City of Bloomington, approval of the Mayor, and any promulgation when required by law.

PASSED by the Common Council of the City of Bloomington on the 09th day of December, 2015.



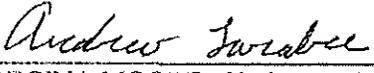
DAVE ROLLO, President
Bloomington Common Council

Attest:



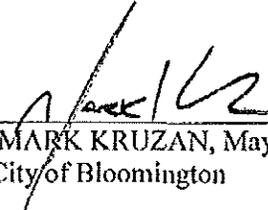
REGINA MOORE, Clerk Andrew Larabee, Deputy Clerk
City of Bloomington

Presented by me to the Mayor of the City of Bloomington, Indiana, this 10th day of December, 2015.



REGINA MOORE, Clerk Andrew Larabee, Deputy Clerk
City of Bloomington

Signed and approved by me, the Mayor of the City of Bloomington, Indiana, this 12th day of ~~DECEMBER~~, 2015.



MARK KRUZAN, Mayor
City of Bloomington

SYNOPSIS

This ordinance is sponsored by Councilmember Neher and amends the Bloomington Municipal Code to extend full protection to the classes of "sexual orientation" and "gender identity." This