

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 warranted by the circumstances and the state of the law; and

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:

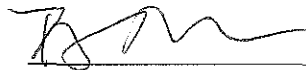
In complaints of discrimination on the basis of housing status discrimination, the commission's authority shall typically be limited to voluntary investigations and voluntary mediation.

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.

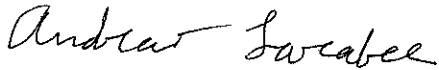
SECTION 4. This ordinance shall be in full force and effect from and after its passage by the Common Council of the City of Bloomington, approval of the Mayor, and any promulgation when required by law.

PASSED by the Common Council of the City of Bloomington on the 9th day of December, 2015.



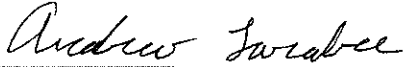
DAVE ROLLO, President
Bloomington Common Council

Attest:



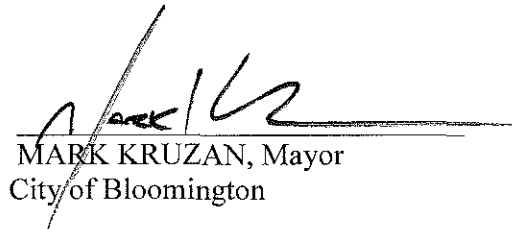
~~REGINA MOORE, Clerk~~ Andrew Larabee, Deputy Clerk
City of Bloomington

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 shift is informed by changing judicial and agency interpretation of the laws protecting these categories. Such changing interpretations increasingly locate sexual orientation discrimination and gender identity discrimination within the protected category of sex discrimination. Location of these classes within the protected category of sex provides the City with a defensible position in calling for mandatory, rather than voluntary, compliance with the Bloomington Municipal Code's prohibition against sexual orientation discrimination and gender identity discrimination.

clerk
legal
BMC
BHRC
HR Attorney