

Municipal Clerk's Office
Amended and Approved
Date: 09/29/2015

Submitted by: Assembly Member Evans
Assembly Member Flynn
Reviewed by: Assembly Counsel
For reading: September 15, 2015

ANCHORAGE, ALASKA
AO No. 2015-96(S-1), As Amended

AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY AMENDING TITLE 5 OF THE ANCHORAGE MUNICIPAL CODE REGARDING EQUAL RIGHTS AND THE ANCHORAGE EQUAL RIGHTS COMMISSION (AERC) TO ADD SEXUAL ORIENTATION AND GENDER IDENTITY TO THE GROUNDS OF DISCRIMINATION PROHIBITED BY THE TITLE, TO EXPAND AND CLARIFY THE RELIGIOUS EXEMPTIONS, AND TO MODIFY THE LAWYER'S ROLE AND AN EVIDENTIARY RULE AT AERC HEARINGS.

WHEREAS, discriminatory practices in the sale or rental of real property, financing practices, employment practices, public accommodations, educational institutions, and practices of the municipality based upon race, color, sex, religion, national origin, marital status, age, or physical or mental disability are prohibited as a matter of public policy by the municipality in AMC section 5.10.010; and

WHEREAS, the Anchorage Assembly finds such discriminatory housing, financing, employment, public accommodation, educational, or municipal practices are detrimental because they impede the social and economic progress, growth, and vitality of the municipality by preventing people from contributing to or fully participating in the cultural, spiritual, social and commercial life of the community; and

WHEREAS, the Anchorage Assembly finds that discrimination on the basis of sexual orientation and gender identity exists and must be addressed because denial or deprivation of housing, financing, employment, public accommodation, education, or municipal opportunities because of an individual's sexual orientation or gender identity is detrimental to health, safety, and welfare, and damages the municipality's economic well being; now therefore,

THE ANCHORAGE ASSEMBLY ORDAINS:

Section 1. Anchorage Municipal Code section 5.10.010 is hereby amended to read as follows:

5.10.010 Policy.

The public policy of the municipality is declared to be equal opportunity for all persons. The assembly finds that invidious discrimination in the sale or rental of real property, financing practices, employment practices, public accommodations, educational institutions, and practices of the municipality, based upon race, color, sex, sexual orientation, gender identity, religion, national origin, marital status, age, or physical or mental disability,

adversely affects the welfare of the community. Accordingly, such discrimination is prohibited.

It is the express intent of this title to guarantee fair and equal treatment under law to all people of the Municipality, consistent with federal and state constitutional freedoms and laws, including freedom of expression, freedom of association and the free exercise of religion.

(AO No. 92-116(S); AO No. 93-99; AO No. 93-149, § 1, 10-15-93; Ord. No. 2002-163, § 1, 1-7-03)

Section 2. Anchorage Municipal Code section 5.20.010, Definitions, is hereby amended to read as follows (*the remainder of the section is not affected and therefore not set out*):

5.20.010 Definitions.

The following words, terms and phrases, when used in this title, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*** *** ***

Blockbusting means any effort, for profit, to induce or attempt to induce a person to sell or rent a dwelling based on representations that a change has occurred, or will or may occur regarding the entry into a block, neighborhood or area, in which the real property is located, of a person or persons of a particular race, color, sex, **sexual orientation, gender identity**, religion, national origin, marital status, age, or physical or mental disability, including but not limited to lower property values, an increase in criminal or antisocial behavior or decline in the quality of the schools or other facilities.

*** *** ***

Discrimination means any direct or indirect act or practice of exclusion, distinction, restriction, segregation, limitation, refusal or denial or any other act or practice of differentiation or preference in the treatment of a person because of **actual or perceived** race, color, religion, national origin, age, sex, **sexual orientation, gender identity**, marital status, or physical or mental disability, or the aiding, abetting, inciting, coercing or compelling thereof.

*** *** ***

Gender Identity means a person's gender-related self-identity, as expressed in appearance, ~~expression~~ or behavior, regardless of the

person's assigned sex at birth. A person's gender identity may be established by evidence of medical history, care or treatment of the gender identity, consistent and uniform assertion of the gender identity, or other evidence that the gender identity is sincerely held, core to a person's gender-related self-identity, and not being asserted for an improper purpose.

Sexual orientation means actual or perceived heterosexuality, homosexuality, bisexuality, or asexuality.

(AO No. 92-116(S); AO No. 93-99; AO No. 93-149, § 2, 10-15-93; AO No. 96-99, § 1, 10-22-96; Ord. No. 2002-163, § 2, 1-7-03)

Section 3. Anchorage Municipal Code section 5.20.020 is hereby amended to read as follows (*the remainder of the section is not affected and therefore not set out*):

5.20.020 Unlawful practices in the sale, rental or use of real property.

A. With the exception of those conditions described in section 5.25.030A. as "lawful practices", it is unlawful for the owner, lessor, manager, agent, brokerage service, or other person having the right to sell, lease, rent, advertise, or an owner's association having the powers of governance and operation of real property to:

1. Refuse to sell, lease or rent, or to otherwise make unavailable, the real property to a person because of race, color, sex, sexual orientation, gender identity, religion, national origin, marital status, age, or physical or mental disability.
2. Discriminate against a person because of race, color, sex, sexual orientation, gender identity, religion, national origin, marital status, age, or physical or mental disability in a term, condition or privilege relating to the use, sale, lease or rental of real property.
3. Make a written or oral inquiry or record of the race, color, sex, sexual orientation, gender identity, religion, national origin, marital status, age, or physical or mental disability of a person seeking to buy, lease or rent real property.
4. Offer, solicit, accept, use or retain a listing of real property with the understanding that a person may be discriminated

1 against in a real estate transaction or in the furnishing of
2 facilities or sources in connection therewith because of a
3 person's race, color, sex, **sexual orientation, gender**
4 **identity,** religion, national origin, marital status, age, or
5 physical or mental disability.
6

7 5. Represent to a person that real property is not available for
8 inspection, sale, rental or lease when in fact it is available, or
9 refuse a person the right to inspect real property, because of
10 the race, color, sex, **sexual orientation, gender identity,**
11 religion, national origin, marital status, age, or physical or
12 mental disability of that person or because of any person
13 associated with that person.
14

15 6. Engage in blockbusting for profit.
16

17 7. Circulate, issue or display, make, print or publish, or cause to
18 be made or displayed, printed or published, any
19 communication, sign, notice, statement or advertisement with
20 respect to the use, sale, lease or rental of real property that
21 indicates any preference, limitation, specification or
22 discrimination based on race, color, sex, **sexual orientation,**
23 **gender identity,** religion, national origin, marital status, age,
24 or physical or mental disability.
25

26 *** **

27 (CAC 8.36.090; AO No. 93-149, § 2, 10-15-93; AO No. 2002-163, § 3, 1-7-03; AO
28 No. 2008-16, § 1, 3-18-08)
29

30 **Section 4.** Anchorage Municipal Code section 5.20.030 is hereby amended to
31 read as follows (*the remainder of the section is not affected and therefore not set*
32 *out*):
33

34 **5.20.030 Unlawful financing practices.**
35

36 A. It is unlawful for an insurance company, a financial institution or other
37 commercial institution extending secured or unsecured credit, upon
38 receiving an application for financial assistance or credit for the
39 acquisition, construction, rehabilitation, repair or maintenance of a
40 housing accommodation or other property or services, or the
41 acquisition or improvement of unimproved property, or upon
42 receiving an application for any sort of loan of money, or upon
43 receiving an application for insurance, to permit one of its officials or
44 employees during the execution of his or her duties to:
45

1. Discriminate against the applicant because of race, color, sex, sexual orientation, gender identity, religion, national origin, marital status, age, or physical or mental disability, in a term, condition or privilege relating to the obtainment or use of the institution's financial assistance, insurance or credit.
2. Make or cause to be made a written or oral inquiry or record of the race, color, sex, sexual orientation, gender identity, religion, national origin, marital status, age, or physical or mental disability, of a person seeking the institution's financial assistance, insurance or credit unless the inquiry is for the purpose of ascertaining the applicant's creditworthiness or insurability.
3. Refuse to extend credit, issue a credit card, insure or make a loan to a single, divorced, pregnant or married person who is otherwise creditworthy, if so requested by the person, or to refuse to extend credit, issue a credit card, insure or make a loan to a creditworthy person based on that person's sexual orientation or gender identity.

*** *** ***

(CAC 8.38.020; AO No. 93-149, § 2, 10-15-93; AO No. 2002-163, § 3, 1-7-03)

Section 5. Anchorage Municipal Code section 5.20.040 is hereby amended to read as follows (*the remainder of the section is not affected and therefore not set out*):

5.20.040 Unlawful employment practices.

A. It is unlawful for:

1. An employer to refuse employment to a person, or to bar him or her from employment, or to discriminate against him or her in compensation, or in a term, condition or privilege of employment or to discharge, expel, reduce, suspend or demote him or her because of race, color, sex, sexual orientation, gender identity, religion, national origin, marital status, age, or physical or mental disability, unless the reason for the discrimination is a bona fide occupational qualification.
2. A labor organization to exclude or to expel a person from its membership or to discriminate against one of its members or an employer or employee because of race, color, sex, sexual

orientation, gender identity, religion, national origin, marital status, age, or physical or mental disability.

3. A person, employer or employment agency to broadcast, publish, print, circulate or cause to be broadcasted, published, printed or circulated a statement or advertisement in connection with prospective employment, or to use a form of application for employment that expresses, directly or indirectly, a limitation, specification, preference or discrimination as to race, color, sex, sexual orientation, gender identity, religion, national origin, marital status, age, or physical or mental disability.

(CAC 8.40.040; AO No. 92-116(S); AO No. 93-99; AO No. 93-77; AO No. 93-149, § 2, 10-15-93; AO No. 2002-163, § 3, 1-7-03)

Section 6. Anchorage Municipal Code section 5.20.050 is hereby amended to read as follows:

5.20.050 Unlawful practices in places of public accommodation.

- A. It is unlawful for a person, whether the owner, operator, agent or employee of an owner or operator of a public accommodation, to:
 1. Refuse, withhold from or deny to a person any of its accommodations, advantages, facilities, benefits, privileges, services or goods of that place on account of race, color, sex, sexual orientation, gender identity, religion, national origin, marital status, age or physical or mental disability.
 2. Publish, circulate, issue, display, post or mail a written or printed communication, notice or advertisement which states or implies that:
 - a. Any of the services, goods, facilities, benefits, accommodations, advantages or privileges of the public accommodation will be refused, withheld from or denied to a person of a certain race, color, sex, sexual orientation, gender identity, religion, national origin, marital status, age, or physical or mental disability; or
 - b. The patronage or presence of a person belonging to a particular race, color, sex, sexual orientation, gender identity, religion, national origin, marital status, age, or

physical or mental disability is unwelcome, not desired,
not solicited, objectionable or unacceptable.

3. Make a written or oral inquiry concerning the race, color, sex, sexual orientation, gender identity, religion, national origin, marital status, age, or physical or mental disability of an individual in connection with the solicitation, reservation, booking, sale or dispensing of its accommodations, advantages, facilities, benefits, privileges, services or goods.

(CAC 8.40.020; AO No. 93-149, § 2, 10-15-93; AO No. 2002-163, § 3, 1-7-03)

Section 7. Anchorage Municipal Code section 5.20.060 is hereby amended to read as follows:

5.20.060 Unlawful practices in educational institutions.

- A. It is unlawful for a person operating or assisting in the operation of an educational institution to:

1. Refuse to admit or otherwise to discriminate against an individual with respect to the terms, conditions, accommodations, advantages, facilities, benefits, privileges or services of that institution on account of race, color, sex, sexual orientation, gender identity, religion, national origin, marital status, age, or physical or mental disability.
2. Make or use a written or oral inquiry or form of application for admission that elicits information concerning the race, color, sex, sexual orientation, gender identity, religion, national origin, marital status, age, or physical or mental disability, of an applicant for admission.
3. Require or cause to be required that a photograph of an applicant for admission be submitted with an application for admission.
4. Publish, circulate or display, or cause to be published, circulated or displayed, a written, printed, oral or visual communication, advertisement or catalog or any other form of publicity relating to admission that expresses or indicates a preference, limitation, specification or discrimination on account of the race, color, sex, sexual orientation, gender

identity, religion, national origin, marital status, age, or physical or mental disability, of an applicant for admission.

5. Establish, announce or follow a policy of denial or limitation of education opportunities for members of a group on account of race, color, sex, sexual orientation, gender identity, religion, national origin, marital status, age, or physical or mental disability.

6. Use in the recruitment of potential applicants for admission, a service or agency that discriminates against individuals on account of race, color, sex, sexual orientation, gender identity, religion, national origin, marital status, age, or physical or mental disability.

(CAC 8.40.030; AO No. 93-149, § 2, 10-15-93; AO No. 2002-163, § 4, 1-7-03)

Section 8. Anchorage Municipal Code section 5.20.070 is hereby amended to read as follows:

5.20.070 Unlawful practices by municipality.

A. It is unlawful for the municipality or any public agency of the municipality to:

1. Refuse, withhold from or deny to a person any local, state or federal funds, services, goods, facilities, advantages or privileges because of race, color, sex, sexual orientation, gender identity, religion, national origin, marital status, age, or physical or mental disability.

2. Publish, circulate, issue, display, post or mail a written or printed communication, notice or advertisement which states or implies that any local, state or federal funds, services, goods, facilities, advantages or privileges of the office or agency will be refused, withheld from or denied to a person of a certain race, color, sex, sexual orientation, gender identity, religion, national origin, marital status, age, or physical or mental disability, or that the patronage of a person belonging to a particular race, color, sex, sexual orientation, gender identity, religion, national origin, marital status, age, or physical or mental disability is unwelcome, not desired or not solicited.

B. Where the provisions of this section 5.20.070 conflict with provisions of Title 7 of this code, this section 5.20.070 shall govern.

(AO No. 91-173(S); AO No. 92-116(S); AO No. 93-99; AO No. 93-149, § 2, 10-15-93; AO No. 2002-163, § 5, 1-7-03)

Section 9. Anchorage Municipal Code section 5.20.080 is hereby amended to read as follows:

5.20.80 Lawful practices.

A. Notwithstanding any provision of this chapter, it shall not be unlawful for a person in connection with the sale or rental of real property, financing practices, employment practices, public accommodations, educational institutions, and practices of the municipality to make or keep records identifying race, color, sex, **sexual orientation, gender identity,** religion, national origin, marital status, age, or physical or mental disability, if the purpose of the record is to comply with federal or state equal opportunity laws or regulations or in furtherance of a program designed to ensure compliance with this title.

B. **The prohibitions against discrimination based on sexual orientation and gender identity in this chapter do not prohibit an employer or an operator of a place of public accommodation from**~~[Other provisions of this chapter notwithstanding, employers or operators of public accommodations may]:~~

1. Maintaining and enforc[e]ing gender-segregated restrooms, locker-rooms or dressing rooms, provided that persons are allowed to use such facilities consistent with their gender identity and~~[require persons to use facilities appropriate to their gender presentation, and]~~**nothing in this chapter shall be deemed to require the provision of special facilities to accommodate any person(s) based upon sexual orientation or gender identity.**

2. Imposing reasonable dress codes and grooming standards, provided that persons are allowed to dress or groom consistent with their gender identity.~~[Impose reasonable dress codes, work rules, codes of conduct, or other rules of general application, and nothing in this chapter~~

~~shall be deemed to require special accommodation for
persons based upon sexual orientation or gender identity.]~~

~~[3.] [Require that a worker have a consistent gender presentation
in the workplace.]~~

(AO No. 93-149, § 2, 10-15-93; AO No. 2002-163, § 7, 1-7-03)

Section 10. Anchorage Municipal Code section 5.20.090 is hereby amended to
read as follows:

5.20.090 Religious exemptions.

A. Religious-Preference Exception: It shall be lawful for a bona fide religious or denominational institution, organization, corporation, association, educational institution, or society, to limit, select or give preferential treatment in employment, admissions, accommodations, advantages, facilities, benefits, or services, to persons of the same religion or denomination, that is reasonably calculated to promote the religious principles for which it is established or maintained. ~~[, and this title shall not be interpreted or applied to require such an organization to act in violation of the religious principles for which it is established or maintained.]~~ Such organizations otherwise remain subject to the other provisions in this title with regard to race, color, sex, **sexual orientation, gender identity**, religion, national origin, marital status, age, or physical or mental disability.

B. Ministerial Exception: This chapter shall not apply with respect to the employment of individuals whose positions would fall within the “ministerial exemption” as described by the United States Supreme Court in Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC, 132 S. Ct. 694 (2012) ~~Ministerial Exception~~ ~~[exemption]: This chapter shall not apply with respect to the employment of individuals whose [primary] duties include~~ ~~[consist of] teaching or spreading religious doctrine or belief, religious governance, supervision of a religious community~~ ~~[order], supervision of persons teaching or spreading religious doctrine or belief, or supervision or participation in religious ritual or worship.]~~

C. Nothing in this chapter shall be construed to violate any rights to free speech or religious exercise guaranteed by the Constitution of the State of Alaska or the Constitution of the United States. ~~[Religious conscience exemption: Except as a condition of a pre-existing employment or contractual relationship, no person, employer or operator of a public accommodation shall be~~

compelled to make any communication in support of, or be
compelled to appear at any ceremony, ritual, or observance that is in
conflict with a sincerely held and demonstrable religious belief of that
person, employer or operator.]

(AO No. 92-116(S); AO No. 93-99; AO No. 2002-163, § 4, 1-7-03)

Section 11. Anchorage Municipal Code section 5.50.020, is hereby amended to
read as follows (*the remainder of the section is not affected and therefore not set
out*):

5.50.020 Fact finding procedures.

- A. After a complaint has been filed, staff shall convene a fact finding
conference with the parties to define issues, receive and exchange
information relevant to the complaint and response, if any, and
negotiate a voluntary resolution of the complaint, if possible, through
a pre-determination settlement agreement. Parties shall be
permitted to be fully represented by legal counsel at the fact
finding conference. Legal counsel shall be entitled to speak
and present on behalf of the represented party at the fact
finding conference. Legal counsel may not, however, cross-
examine the other party and must submit any questions
through staff.

*** **

- D. (Reserved) ~~If counsel for any party is present, counsel shall be
limited to an advisory role and will not be permitted to speak for their
client. for questioning purposes, counsel may ask questions only
through staff.]~~

*** **

(AR No. 92-223(S); AR No. 96-174, § 3, 10-22-96; AO No. 2002-163, § 15,
1-7-03)

Section 12. Anchorage Municipal Code section 5.50.030B, is not ~~hereby~~
~~amended. [to read as follows -] (I[the remainder of the section is not affected and
therefore not set out):~~

**5.50.030 Effect of failure to furnish responses to requests for
essential information or produce witnesses or attend fact
finding conference.**

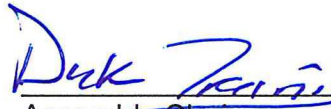
*** **

1 B. ~~[The Respondent's failure to participate in the fact finding conference~~
2 ~~or to provide requested information cannot be treated as an~~
3 ~~admission or evidence of the allegations in the complaint. In order~~
4 ~~for staff to reach a substantial evidence determination it must rely~~
5 ~~upon actual evidence, whether direct or circumstantial, of~~
6 ~~discrimination.]~~ If the respondent fails to timely furnish the
7 information requested in subsection 5.50.020B.2 of this title, of if the
8 respondent fails to provide responses to a request for essential
9 information or interrogatories, or fails to attend the fact finding
10 conference without good cause or unreasonably obstructs the fact
11 finding conference, this conduct may be treated as an admission of
12 the allegations in the complaint for purposes of the substantial
13 evidence determination only.}

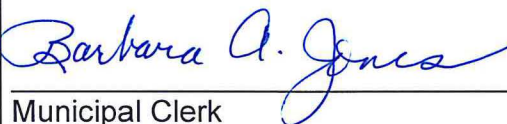
14
15 (AR No. 92-223(S); AR No. 96-174, § 4, 10-22-96; AO No. 2002-163, § 15,
16 1-7-03)
17

18 **Section 13.** This ordinance shall become effective immediately upon its passage
19 and approval by the Assembly.
20

21
22 PASSED AND APPROVED by the Anchorage Assembly this 29th day of
23 September, 2015.
24

25 
26 _____
27 Assembly Chair
28

29 ATTEST:

30 
31 _____
32 Municipal Clerk
33