

Legistar ID No.: 2014-0303

AGENDA REQUEST

FOR: COUNCIL MEETING OF July 15, 2014

FROM:
CITY COUNCIL MEMBER Matthew Petty

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:


AN ORDINANCE TO AMEND THE FAYETTEVILLE CODE BY ENACTING CHAPTER 119
CIVIL RIGHTS ADMINISTRATION TO PROTECT THE CIVIL RIGHTS OF
FAYETTEVILLE CITIZENS AND VISITORS AND TO CREATE THE POSITION OF CIVIL
RIGHTS ADMINISTRATOR FOR THE CITY OF FAYETTEVILLE

APPROVED FOR AGENDA:



City Council Member Matthew Petty

7/2/2014
Date



Assistant City Attorney Blake Pennington
(as to form)

7/2/14
Date

At on the first reading at the 7/15/14 City Council Meeting.

Pennington, Blake

From: matt@matthewpetty.org on behalf of Matthew Petty - Fayetteville Ward 2
<citycouncil@matthewpetty.org>
Sent: Thursday, May 15, 2014 3:09 PM
To: Williams, Kit
Cc: Pennington, Blake; James Rector
Subject: Anti-Discrimination Ordinance
Attachments: Fayetteville HRO 5.15.2014.docx

Hi Kit,

Attached is a draft Anti-Discrimination Ordinance that I would like to get passed in Fayetteville. It targets discrimination in housing transactions and employment decisions.

I want to introduce it at the first meeting in July. Can you guys take a look at it and think about how it might need to be adapted for consistency with Arkansas and municipal code? I'd like to have a first meeting on it the week of the 26th (or I can do late next week).

Thanks for your help,
M

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE FAYETTEVILLE CODE BY ENACTING CHAPTER 119 CIVIL RIGHTS ADMINISTRATION TO PROTECT THE CIVIL RIGHTS OF FAYETTEVILLE CITIZENS AND VISITORS AND TO CREATE THE POSITION OF CIVIL RIGHTS ADMINISTRATOR FOR THE CITY OF FAYETTEVILLE

WHEREAS, the City of Fayetteville seeks to protect and safeguard the right and opportunity of all persons to be free from unfair discrimination based on real or perceived race, ethnicity, national origin, age, gender, gender identity, gender expression, familial status, marital status, socioeconomic background, religion, sexual orientation, disability and veteran status; and

WHEREAS, the City of Fayetteville seeks to promote the public health and welfare of all persons who live or work in the City of Fayetteville and to ensure that all persons within the City have equal access to employment, housing, and public accommodations.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. That the City Council of the City of Fayetteville, Arkansas enacts Chapter 119 **Civil Rights Administration** as shown on Exhibit "A" attached hereto.

PASSED and **APPROVED** this _____ day of _____, 2014.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

EXHIBIT A

CHAPTER 119: CIVIL RIGHTS ADMINISTRATION

119.01 Purpose

The purpose of this chapter is to protect and safeguard the right and opportunity of all persons to be free from discrimination based on real or perceived race, ethnicity, national origin, age, gender, gender identity, gender expression, familial status, marital status, socioeconomic background, religion, sexual orientation, disability and veteran status. This chapter's purpose is also to promote the public health and welfare of all persons who live or work in the City of Fayetteville and to ensure that all persons within the City have equal access to employment, housing, and public accommodations.

119.02 Definitions

- (A) "Business Establishment" means any entity, however organized, which furnishes goods, services or accommodations to the general public. An otherwise qualifying establishment which has membership requirements is considered to furnish services to the general public if its membership requirements consist only of payment of fees or consist only of requirements under which a substantial portion of the residents of the city could qualify.
- (B) "Civil Rights Administrator" means the person designated by the Mayor to receive, investigate and conciliate complaints brought under this chapter.
- (C) "Disability" or "Disabled" means, with respect to an individual, a physical or mental impairment, a record of such an impairment, or being perceived or regarded as having such impairment. For purposes of this chapter, discrimination on the basis of disability means that no covered entity shall discriminate against a qualified individual with a disability because of that individual's disability. The term "qualified individual with a disability" shall mean an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment positions that the individual holds or desires.
- (D) "Discriminate, Discrimination or Discriminatory" means any act, policy or practice that has the effect of subjecting any person to differential treatment as a result of that person's real or perceived race, ethnicity, national origin, age (if 18 years of age or older), gender, gender identity, gender expression, familial status, marital status, socioeconomic background, religion, sexual orientation, disability or veteran status.
- (E) "Employee" means any individual employed or seeking employment from an employer.
- (F) "Employer" means any person, business or organization which regularly employs five (5) or more individuals, not including the employer's parents, spouse or children. For purposes of this chapter an employer "regularly" employs five (5) individuals when the employer employs five (5) or more individuals for each working day in any twenty (20) or more calendar weeks in the current or previous calendar year. For purposes of this chapter an "employer" is also any person or entity acting on behalf of an employer, directly or indirectly, or any employment agency.
- (G) "Familial status" means an individual's status as parent or legal guardian to a child or children below the age of eighteen (18) who may or may not reside with that individual.
- (H) "Gender" means actual or perceived sex.
- (I) "Gender Identity" means a person's gender-related identity, whether or not that identity is or is perceived to be different from that traditionally associated with the sex assigned to that individual at birth.
- (J) "Gender Expression" means a person's gender-related appearance and behavior whether or not that gender expression is or is perceived to be different from that traditionally associated with the person's assigned sex at birth.
- (K) "Marital status" means an individual's status as single, married, domestically partnered, divorced or widowed.
- (L) "Place of public accommodation" means inns, taverns, hotels, motels, restaurants, wholesale outlets, retail outlets, banks, savings and loan associations, other financial institutions, credit information bureaus, insurance companies, dispensaries, clinics, hospitals, theaters, recreational parks and facilities, trailer camps, garages, public halls, and all other establishments within the City which offer goods, services, accommodations and entertainment to the public. A place of public accommodation does not include any institution, club or other place of accommodation, which by its nature is distinctly private.

- (M) "Sexual orientation" means actual or perceived heterosexuality, homosexuality or bisexuality.
- (N) "Veteran status" means an individual's status as one who served in the active military, naval or air service, and who was discharged or released under conditions other than dishonorable.

119.03 Prohibited Acts of Discrimination - Employment

- (A) With regard to employment, it shall be unlawful for any employer or labor organization to engage in any of the following acts wholly or partially for a discriminatory reason:
- (1) To fail to hire, refuse to hire or discharge an individual;
 - (2) To discriminate against any individual with respect to compensation, terms, conditions or privileges of employment, including promotion. Nothing in this section shall be construed to require any employer to provide benefits, such as insurance, to individuals not employed by the employer;
 - (3) To limit, segregate or classify employees in any way which would deprive or tend to deprive any employee of employment opportunities, or which would otherwise tend to adversely affect his or her status as an employee;
 - (4) To fail or refuse to refer for employment any individual in such a manner that would deprive an individual of employment opportunities, that would limit an individual's employment opportunities or that would otherwise adversely affect an individual's status as a prospective employee or as an applicant for employment;
 - (5) To discriminate against an individual in admission to, or employment in, any program established to provide apprenticeship or other job training, including on-the-job training programs;
 - (6) To print or publish, or cause to be printed or published, any discriminatory notice or advertisement relating to employment. This subsection shall not be construed so as to expose the person who prints or publishes the notice or advertisement, such as a newspaper, to liability;
 - (7) To discriminate in referring an individual for employment whether the referral is by an

employment agency, labor organization or any other person.

119.04 Prohibited Acts of Discrimination - Housing and Real Estate Transactions

- (A) With regard to housing and real estate transactions, which include both sales and leases, it shall be unlawful to engage in any of the following acts wholly or partially for a discriminatory reason:
- (1) To discriminate by impeding, delaying, discouraging or otherwise limiting or restricting any transaction in real estate;
 - (2) To discriminate by imposing different terms on a real estate transaction;
 - (3) To represent falsely that an interest in real estate is not available for transaction;
 - (4) To include in the terms or conditions of a real estate transaction any discriminatory clause, condition or restriction;
 - (5) To discriminate in performing, or refusing to perform, any act necessary to determine an individual's financial ability to engage in a real estate transaction;
 - (6) For a property manager to discriminate by refusing to provide equal treatment of, or services to, occupants of any real estate which he or she manages;
 - (7) To make, print or publish, or cause to be made, printed or published, any discriminatory notice, statement or advertisement with respect to a real estate transaction or proposed real estate transaction, or financing relating thereto. This subsection shall not be construed to prohibit advertising directed to physically disabled persons or persons over the age of fifty-five (55) for the purpose of calling to their attention the existence or absence of housing accommodations or services for the physically disabled or elderly;
 - (8) To discriminate in any financial transaction involving real estate on account of the location of the real estate, be it residential or non-residential ("red-lining");
 - (9) For a real estate operator, a real estate broker, a real estate salesperson, a financial institution, an employee of any of these or any other person, for the purposes of inducing a

real estate transaction from which such person may benefit financially, to represent that a change has occurred or will or may occur in the composition with respect to the race, ethnicity, national origin, age, gender, gender identity, gender expression, familial status, marital status, socioeconomic background, religion, sexual orientation, physical characteristic, disability or veteran status of the owners or occupants in the block, neighborhood or area in which the real property is located or to represent that this change will or may result in the lowering of property values, an increase in criminal or antisocial behavior or a decline in the quality of schools in the block, neighborhood or area in which the real property is located ("block-busting");

(10) Notwithstanding the provisions of subsections (a) through (h), it shall not be an unlawful discriminatory practice for an owner to limit occupancy on the basis of a person's low-income, age over fifty-five (55) years or disability status in accordance with federal or state law;

(11) Notwithstanding the provisions of subsections (a) through (h), it shall not be an unlawful discriminatory practice for an owner, lessor or renter to refuse to rent, lease or sublease a portion of a single family dwelling unit to a person as a tenant, roomer or boarder where it is anticipated that the owner, lessor or renter will be occupying any portion of the single-family dwelling or to refuse to rent, lease or sublease where it is anticipated that the owner, lessor or renter will be sharing either a kitchen or a bathroom with the tenant, roomer or boarder.

(12) Notwithstanding any other provision of this chapter, it is not an unlawful discriminatory practice to apply or enforce the definition of "family" for zoning purposes pursuant to § 151.01 of the Unified Development Code.

119.05 Prohibited Acts of Discrimination - Business Establishments or Public Accommodations

(A) It shall be unlawful for a business establishment or place of public accommodation to engage in any of the following acts wholly or partially for a discriminatory reason:

(1) To deny, directly or indirectly, any person the full enjoyment of the goods, services, facilities, privileges, advantages and accommodations

of any business establishment or place of public accommodation, unless required by state or federal law;

(2) To print, publish, circulate, post or mail, directly or indirectly, a statement, advertisement or sign which indicates that the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of a business establishment or place of public accommodation will be unlawfully refused, withheld from or denied an individual, or which indicates that an individual's patronage of, or presence at, the business establishment or place of public accommodation is objectionable, unwelcome, unacceptable or undesirable, unless the denial of the goods or services is required by state or federal law.

119.06 City Services, Facilities, Transactions and Contracts

(A) The City of Fayetteville shall be bound by the provisions of this chapter to the same extent as private individuals and businesses.

(B) All contractors doing business with the City of Fayetteville shall abide by this ordinance.

119.07 General Exceptions

(A) Any practice which has a discriminatory effect and which would otherwise be prohibited by this chapter shall not be deemed unlawful if it can be established that the practice is not intentionally devised to contravene the prohibitions of this chapter and there exists no less discriminatory means of satisfying a business purpose.

(B) This chapter shall not apply to any federal, state or county government office or official, or any public educational institution within the City.

(C) Unless otherwise prohibited by law, nothing contained in this chapter shall be construed to prohibit promotional activities such as senior citizen discounts and other similar practices designed primarily to encourage participation by a protected group.

(D) It shall not be an unlawful discriminatory practice for an employer to observe the conditions of a bona fide seniority system or a bona fide employee benefit system such as a retirement, pension or insurance plan which is not a subterfuge or pretext to evade the purposes of this chapter.

(E) It shall not be an unlawful discriminatory practice

for any person to carry out an affirmative action plan as required by state or federal law, or by court order.

- (F) Nothing contained in this chapter shall be deemed to prohibit selection or rejection based solely upon a bona fide occupational qualification or a bona fide physical requirement. Nothing contained in this chapter shall be deemed to prohibit a religious or denominational institution from selecting or rejecting applicants and employees for non-secular positions on the basis of the applicant's or employee's conformance with the institution's religious or denominational principles. If a party asserts that an otherwise unlawful practice is justified as a permissible bona fide occupational qualification or a permissible bona fide physical requirement, that party shall have the burden of proving:
- (1) That the discrimination is in fact a necessary result of such a bona fide condition; and
 - (2) That there exists no less discriminatory means of satisfying the bona fide requirement.
- (G) If a party asserts that an otherwise unlawful practice is justified as a permissible bona fide religious or denominational preference, that party shall have the burden of proving that the discrimination is in fact a necessary result of such a bona fide condition.
- (H) Any age restrictions required by state or federal law or regulations, including for the sale or delivery of alcoholic beverages, are not improper age discrimination under this chapter.

119.08 Posting of Notices

- (A) Every employer or entity subject to this chapter shall post and keep posted in a conspicuous location where business or activity is customarily conducted or negotiated, a notice, the language and form of which has been prepared by the City of Fayetteville, setting forth excerpts from or summaries of the pertinent provisions of this chapter and information pertinent to the enforcement of rights hereunder. The notice shall be in both English and Spanish. If over ten percent of an employer's employees speak, as their native language, a language other than English or Spanish, notices at that employer's place of business shall be posted in that language. At the request of the employer or entity, notices required by this section shall be provided by the City. Notices shall be posted within ten days after receipt from the City.

119.09 Retaliation Prohibited

- (A) It is an unlawful discriminatory practice to coerce, threaten, retaliate against, interfere with or discriminate against a person because that person has opposed any practice made unlawful by this chapter, has made a non-frivolous charge or complaint, or has testified truthfully, assisted or participated in an investigation, proceeding or hearing pursuant to this chapter.
- (B) It is an unlawful discriminatory practice to require, request or suggest that a person or entity retaliate against, interfere with, intimidate or discriminate against a person because that person has opposed any practice made unlawful by this chapter, has made a non-frivolous charge or has testified truthfully, assisted or participated in an investigation, proceeding or hearing authorized under this chapter.
- (C) It is an unlawful discriminatory practice to cause or coerce, or attempt to cause or coerce, directly or indirectly, any person in order to prevent that person from complying with the provisions of this chapter.

119.10 Preservation of Business Records

- (A) Where a complaint of discrimination has been filed against a person under this ordinance, such person shall preserve all records relevant to the complaint until a final disposition of the complaint.

119.11 Administration and Enforcement

- (A) The Mayor shall designate the Civil Rights Administrator, who shall administer this chapter and be responsible for receiving, investigating and conciliating complaints filed under this chapter. To be considered and administered by the Civil Rights Administrator, complaints must be received in the Civil Rights Administrator's office no more than six months after the alleged discriminatory action or, in the case of ongoing alleged discriminatory actions, no more than six months after the most recent incident of alleged discrimination. The Civil Rights Administrator shall prepare an easy to use complaint form and make the form easily accessible to the public.
- (B) The Civil Rights Administrator should first attempt to eliminate the unlawful practice or practices through conciliation or mediation. In conciliating a complaint, the administrator should try to achieve a just resolution and obtain assurances that the respondent will satisfactorily remedy any violation of the complainant's rights and take action to ensure the elimination of both present and future unlawful practices in compliance with this

chapter. If the Civil Rights Administrator determines that the complainant is not acting in good faith, the conciliation or mediation may be terminated and the complaint may be immediately dismissed. If the respondent is not participating in good faith, the complaint may be immediately referred to the City Prosecutor's office.

- (C) After any attempted conciliation or mediation, the Civil Rights Administrator will refer any unresolved complaint and complainant as needed to the City Prosecutor's Office for appropriate further action, including prosecution.
- (D) The filing of a complaint under this chapter does not preclude any other state or federal remedies that may be available to a complainant.



OFFICE OF THE
CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE




Kit Williams
City Attorney

Blake Pennington
Assistant City Attorney

Patti Mulford
Paralegal

TO: Mayor Jordan
City Council

CC: Kit Williams, City Attorney

FROM: Blake Pennington, Assistant City Attorney 

DATE: July 17, 2014

RE: Civil Rights Ordinance

While there is no specific Arkansas statute expressly authorizing a municipality to enact an anti-discrimination ordinance, the state legislature has authorized municipalities to legislate pursuant to their police powers under a number of statutes. Generally, "a municipality is authorized to perform any function and exercise full legislative power in any and all matters of whatsoever nature pertaining to its municipal affairs" and may even legislate on issues designated as "state affairs" as long as the regulation is not in conflict with or contrary to state law. A.C.A. § 14-43-601 - 14-43-602.

More specifically, a city has "the power to make and publish bylaws and ordinances, not inconsistent with the laws of this state, which, as to them, shall seem necessary to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of such corporations and the inhabitants thereof." A.C.A. § 14-55-102. Cities have the power to "prevent injury or annoyance within the limits of the municipal corporation from anything dangerous, offensive, or unhealthy []." A.C.A. § 14-54-103(1). Cities may also "prevent or regulate the carrying on of any trade, business, or vocation of a tendency dangerous to morals, health, or safety []." A.C.A. § 14-54-104(3)(C).

In fact, the Arkansas Supreme Court has held that "the mere possibility of a public harm is sufficient basis for the municipality to regulate under its police power. Phillips v. Town of Oak Grove, 333 Ark. 183 (1998). Thus, this grant of power provides the basis for the City Council to enact a civil rights ordinance for the City of Fayetteville in order to protect residents and visitors of Fayetteville from unlawful discrimination in employment, public accommodation, business transactions, housing and real estate transaction, and the use of city services.

