



Legislation Text

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**File #: 2015-0319, Version: 1**

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**UNIFORM NONDISCRIMINATION PROTECTIONS SPECIAL ELECTION**

A RESOLUTION TO APPROVE A BUDGET ADJUSTMENT IN THE AMOUNT OF \$40,000.00 TO PROVIDE FUNDING FOR PAYMENT OF COSTS RELATED TO THE UNIFORM NONDISCRIMINATION PROTECTIONS SPECIAL ELECTION

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:**

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment, a copy of which is attached to this Resolution, in the amount of \$40,000.00 to provide funding for payment of costs related to the Uniform Nondiscrimination Protections Special Election.

**City of Fayetteville Staff Review Form**

**2015-0319**

**Legistar File ID**

**8/4/2015**

**City Council Meeting Date - Agenda Item Only**  
N/A for Non-Agenda Item

Sondra E. Smith

City Clerk/Treasurer /  
General Government Department

**Submitted By**

**Division / Department**

**Action Recommendation:**

Approval of a Budget Adjustment to pay for the Uniform Nondiscrimination Protections Special Election

**Budget Impact:**

1010.6600.5318.00																															
Account Number	Fund																														
Project Number	Project Title																														
<table border="0" style="width: 100%;"> <tr> <td style="width: 30%;"><b>Budgeted Item?</b></td> <td style="width: 10%;"><u>No</u></td> <td style="width: 30%;"><b>Current Budget</b></td> <td style="width: 10%; text-align: right;">\$</td> <td style="width: 10%; text-align: right;">-</td> </tr> <tr> <td></td> <td></td> <td><b>Funds Obligated</b></td> <td style="text-align: right;">\$</td> <td style="text-align: right;">-</td> </tr> <tr> <td></td> <td></td> <td><b>Current Balance</b></td> <td style="text-align: right;">\$</td> <td style="text-align: right;">-</td> </tr> <tr> <td><b>Does item have a cost?</b></td> <td><u>Yes</u></td> <td><b>Item Cost</b></td> <td style="text-align: right;">\$</td> <td style="text-align: right;">40,000.00</td> </tr> <tr> <td><b>Budget Adjustment Attached?</b></td> <td><u>Yes</u></td> <td><b>Budget Adjustment</b></td> <td style="text-align: right;">\$</td> <td style="text-align: right;">40,000.00</td> </tr> <tr> <td></td> <td></td> <td><b>Remaining Budget</b></td> <td style="text-align: right;">\$</td> <td style="text-align: right;">-</td> </tr> </table>	<b>Budgeted Item?</b>	<u>No</u>	<b>Current Budget</b>	\$	-			<b>Funds Obligated</b>	\$	-			<b>Current Balance</b>	\$	-	<b>Does item have a cost?</b>	<u>Yes</u>	<b>Item Cost</b>	\$	40,000.00	<b>Budget Adjustment Attached?</b>	<u>Yes</u>	<b>Budget Adjustment</b>	\$	40,000.00			<b>Remaining Budget</b>	\$	-	
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<b>Budget Adjustment Attached?</b>	<u>Yes</u>	<b>Budget Adjustment</b>	\$	40,000.00																											
		<b>Remaining Budget</b>	\$	-																											

V20140502

Previous Ordinance or Resolution # 5781

Original Contract Number: \_\_\_\_\_

Approval Date: 06/16/2015

Comments:



## CITY COUNCIL AGENDA MEMO

### MEETING OF AUGUST 4, 2015

**TO:** Mayor Lioneld Jordan and City Council  
**FROM:** Sondra E. Smith, City Clerk Treasurer  
**DATE:** July 9, 2015  
**SUBJECT:** Uniform Nondiscrimination Protections (Civil Rights) Special Election Cost

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### RECOMMENDATION:

At the time the 2015 budget was completed there were no special or general elections planned for the calendar year. The City Council approved Ordinance Number 5781, Uniform Nondiscrimination Protections on June 16, 2015 and set a date for a special election on September 8, 2015.

AN ORDINANCE TO ENSURE UNIFORM NONDISCRIMINATION PROTECTIONS WITHIN THE CITY OF FAYETTEVILLE FOR GROUPS ALREADY PROTECTED TO VARYING DEGREES THROUGHOUT STATE LAW

It is necessary to bring forth a budget adjustment ordinance to pay for the election. Elections vary in cost therefore the cost for this special election is an estimated cost. I am requesting a budget adjustment in the amount of \$40,000.00 to cover the estimated special election cost.

The City Clerk recommends the approval of a Budget Adjustment to pay for the Uniform Nondiscrimination Protections Special Election.

### BUDGET/STAFF IMPACT:

\$40,000.00

**ORDINANCE NO. 5781**

**AN ORDINANCE TO ENSURE UNIFORM NONDISCRIMINATION PROTECTIONS WITHIN THE CITY OF FAYETTEVILLE FOR GROUPS ALREADY PROTECTED TO VARYING DEGREES THROUGHOUT STATE LAW**

**WHEREAS**, laws including the Civil Rights Act (42 U.S.C § 2000e, et seq.), the Arkansas Civil Rights Act of 1993 (A.C.A. § 16-123-101 et seq.) and the Arkansas Fair Housing Act (A.C.A. § 16-123-201 et seq.) provide Fayetteville citizens with protections against discrimination on the basis of race, ethnicity, national origin, age, sex, religion and disability; and

**WHEREAS**, the General Assembly has determined that attributes such as “gender identity” and “sexual orientation” require protection {A.C.A. § 6-18-514 (b)(1)}; and

**WHEREAS**, Fayetteville citizens deserve fair, equal and dignified treatment under the law; and

**WHEREAS**, Fayetteville seeks to attract a diverse and creative workforce by promoting itself to prospective businesses and employees as a fair, tolerant and welcoming community; and

**WHEREAS**, the protected classifications in A.C.A. § 6-18-514 (b)(1) for persons on the basis of gender identity and sexual orientation should also be protected by the City of Fayetteville to prohibit those isolated but improper circumstances when some person or business might intentionally discriminate against our gay, lesbian, bisexual and transgender citizens; and

**WHEREAS**, in response to the concerns recently expressed by the citizens of Fayetteville on a similar issue, the Fayetteville City Council recognizes their interest in participating in the democratic process and invites the citizens to decide whether gender identity and sexual orientation should also be protected by the City of Fayetteville.

**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 hereby refers this ordinance to the Fayetteville voters for their enactment or rejection in a Special Election to be held on September 8, 2015. The operative provisions that will be enacted by Fayetteville citizens into the Fayetteville Code if approved by a majority of Fayetteville citizens voting in the election shall be as follows:

### **“Uniform Civil Rights Protection**

#### **Purpose**

Fayetteville is a welcoming, fair and tolerant city which endeavors to ensure that all of its citizens and visitors will be free from unfair discrimination. Since Federal and State law already protect citizens from most discrimination, the **Uniform Civil Rights Protection** Article shall extend existing protections to lesbian, gay, bisexual, and transgender citizens and visitors as recognized elsewhere in state law.

#### **Definitions**

(A) *“Employee”*. This definition adopts and incorporates herein the definition of “Employee” as stated in the Arkansas Civil Rights Act of 1993, A.C.A. § 16-123-102 (4).

(B) *“Employer”*. This definition adopts and incorporates herein the definition of “Employer” as stated in the Arkansas Civil Rights Act of 1993, A.C.A. § 16-123-102 (5).

(C) *“Gender Identity”* means an individual's own, bona fide sense of being male or female, and the related external characteristics and behaviors that are socially defined as either masculine or feminine. Gender identity may or may not correspond to the sex assigned to the individual at birth.

(D) *“Housing accommodation”*: This definition adopts and incorporates herein the definition of “Housing accommodation” as stated in the Arkansas Fair Housing Act of 1993, A.C.A. § 16-123-202 (1).

(E) *“Place of public resort, accommodation, assemblage or amusement”*. This definition adopts and incorporates herein the definition of “Place of public resort, accommodation, assemblage or amusement” as stated in the Arkansas Civil Rights Act of 1993, A.C.A. § 16-123-102 (7). Furthermore, this shall not mean any religious facility or other religious institution including their owned and operated schools and daycare facilities.

(F) *“Real estate broker or salesman”*. This definition adopts and incorporates herein the definition of “Real estate broker or salesman” as stated in the Arkansas Fair Housing Act of 1993, A.C.A. § 16-123-202 (2).

(G) “*Real estate transaction*”. This definition adopts and incorporates herein the definition of “Real estate transaction” as stated in the Arkansas Fair Housing Act of 1993, A.C.A. § 16-123-202 (3).

(H) “*Real property*”. This definition adopts and incorporates herein the definition of “Real property” as stated in the Arkansas Fair Housing Act of 1993, A.C.A. § 16-123-202 (4).

(I) “*Sexual Orientation*” means heterosexuality, homosexuality or bisexuality by practice, identity or expression.

### **Applicability and Exemptions**

(A) The **Uniform Civil Rights Protection Article** is only applicable to discriminatory actions occurring within the Fayetteville city limits.

(B) This Article adopts and incorporates herein the entirety of A.C.A. § 16-123-103 **Applicability** of the Arkansas Civil Rights Act.

(C) Churches, religious schools and daycare facilities, and religious organizations of any kind shall be exempt from this Article.

### **Discrimination Offense**

(A) The right of an otherwise qualified person to be free from discrimination because of sexual orientation and gender identity is the same right of every citizen to be free from discrimination because of race, religion, national origin, gender and disability as recognized and protected by the Arkansas Civil Rights Act of 1993.

(B) The **Uniform Civil Rights Protection Article** adopts and incorporates herein these rights as quoted below:

(1) The right to obtain and hold employment without discrimination;

(2) The right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement;

(3) The right to engage in property transactions (including sales and leases) without discrimination;

(4) The right to engage in credit and other contractual transactions without discrimination;  
and

(5) The right to vote and participate fully in the political process.

(C) A person engaging in a real estate transaction, or a real estate broker or salesman, shall not on the basis of sexual orientation or gender identity engage in any conduct likewise prohibited by A.C.A. § 16-123-204 **Prohibited Acts** of the Arkansas Fair Housing Act on the basis of other enumerated attributes.

(D) No employer shall discriminate against nor threaten any individual because such individual in good faith has opposed any act or practice made unlawful by this section or because such person in good faith made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing related to the **Uniform Civil Rights Protection** Article.

### **Establishment and Duties of a Civil Rights Commission**

There is hereby established the Civil Rights Commission. The Civil Rights Commission shall review and decide complaints of alleged discrimination in violation of the **Uniform Civil Rights Protection** Article. The Commission will provide to the City Council an annual accounting of the number of complaints received and the outcomes.

### **Composition**

(A) The Civil Rights Commission shall consist of seven members composed of the following:

- (1) Two (2) representatives of the business community;
- (2) Two (2) owners or managers of rental property;
- (3) One (1) representative with experience in Human Resources or employment law;
- (4) Two (2) citizens at large, at least one of whom identifies as gay, lesbian, bisexual, or transgender.

(B) Members will be appointed by the City Council, each for a term of three years. Appointments shall be staggered so that each year either two or three members' terms shall be available for appointment by the Nominating Committee.

(C) Members of the Civil Rights Commission may be removed from office by the City Council for cause upon written charges and after a public hearing.

### **Meetings**

(A) The Civil Rights Commission shall meet for an organizational meeting within 60 days after the citizens enact this ordinance and every year thereafter following the appointment of new members.

(B) Meetings shall be held at the call of the chairperson.

- (C) A majority of the membership of the Civil Rights Commission shall constitute a quorum.
- (D) All meetings shall be open to the public.
- (E) The Civil Rights Commission shall adopt rules necessary to the conduct for its affairs, and in keeping with the provisions of the City's **Uniform Civil Rights Protection** Article.

### **Staff Support**

The City Attorney's office shall receive complaints on behalf of the Civil Rights Commission and assist the Commission in performing its duties and carrying out its responsibilities.

### **Complaint Procedure and Enforcement**

- (A) A person asserting a claim of discrimination, herein referred to as the "Complainant", pursuant to this **Uniform Civil Rights Protection** Article must present such claim in writing to the City Attorney's office no more than ninety (90) days after the person has knowledge of the facts giving rise to the claim of discrimination. The City Attorney's office will, within two (2) business days, notify the Civil Rights Commission that a complaint was received.
- (B) Informal mediation or conciliation between the alleged discriminator, herein referred to as the "Respondent", and Complainant shall be attempted by the City within four business days and before any other enforcement measures can begin. Such mediation or conciliation measures shall be pursued in accordance with the confidentiality protections provided by A.C.A. § 16-7-206. Mediation and conciliation should be concluded within two weeks after the complaint is received unless both parties agree to further efforts.
- (C) If conciliation efforts are successful in resolving the complaint, the Civil Rights Commission will be notified of resolution and take no further action.
- (D) If conciliation efforts fail to resolve the complaint, the Civil Rights Commission shall notify both parties that a hearing will be conducted at a specified place and time not more than fourteen (14) business days after the conclusion of conciliation efforts but not less than five (5) business days after issuance of notice of the hearing.
- (E) Conduct of the Hearing:
  - (1) The Civil Rights Commission shall review the initial complaint and may receive any additional evidence from the Complainant.



(2) The Respondent shall have an opportunity to explain or provide evidence to rebut any allegations of illegal discriminatory acts. No person shall be compelled to be a witness against himself in any formal or informal hearing.

(3) After considering all the evidence presented, if the Civil Rights Commission determines that the Respondent has violated this Article, the Commission shall forward the original claim and their findings to the City Prosecutor.

(F) Penalty:

(1) A person's first violation of this ordinance shall carry a penalty of up to a \$100.00 fine. Fayetteville City Code § 10.99 **General Penalty** shall apply to any subsequent violations.

(2) No violation of this Article shall be construed to be a misdemeanor or felony.

**Severability**

If any part, provision or section of this ordinance is held invalid or unconstitutional it shall be severed from the remainder which shall remain valid and enforceable."

Section 2. That the City Council for the City of Fayetteville, Arkansas hereby determines that if the Fayetteville voters fail to approve the referred ordinance, the ordinance will not go into effect; but if the voters approve the ordinance, the ordinance quoted in Section 1 will be enacted into the Fayetteville Code and become effective sixty (60) days after the approving election.

**PASSED and APPROVED** this 16<sup>th</sup> day of June, 2015.

APPROVED:

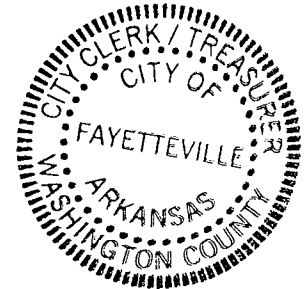
ATTEST:

By:

  
LIONELD JORDAN, Mayor

By:

  
SONDRA E. SMITH, City Clerk Treasurer



Legistar ID No.: 2015-0274

## AGENDA REQUEST FORM

**FOR: Council Meeting of June 16, 2015**

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**FROM:**

**City Council Member Adella Gray**

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**ORDINANCE OR RESOLUTION TITLE AND SUBJECT:**

AN ORDINANCE TO ENSURE UNIFORM NONDISCRIMINATION PROTECTIONS WITHIN THE CITY OF FAYETTEVILLE FOR GROUPS ALREADY PROTECTED TO VARYING DEGREES THROUGHOUT STATE LAW

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**APPROVED FOR AGENDA:**

  
\_\_\_\_\_  
City Council Member Adella Gray

6-3-15  
Date

**AGENDA REQUEST FORM**

**FOR: Council Meeting of June 16, 2015**

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**FROM:**

**City Council Member Adella Gray**

**City Council Member Matthew Petty**

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**ORDINANCE OR RESOLUTION TITLE AND SUBJECT:**

AN ORDINANCE TO ENSURE UNIFORM NONDISCRIMINATION PROTECTIONS WITHIN THE CITY OF FAYETTEVILLE FOR GROUPS ALREADY PROTECTED TO VARYING DEGREES THROUGHOUT STATE LAW

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**APPROVED FOR AGENDA:**

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City Council Member Adella Gray

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Date



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City Council Member Matthew Petty

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6-3-2015

Date



OFFICE OF THE  
CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



Kit Williams  
City Attorney

Blake Pennington  
Assistant City Attorney

Patti Mulford  
Paralegal

TO: Mayor Jordan  
City Council

FROM: Kit Williams, City Attorney

DATE: June 3, 2015

RE: Legality of enacting an ordinance to prohibit some types of discrimination based upon a person's gender identity or sexual orientation

Act 137 of 2015 codified as A.C.A. § 14-1-401 "Intrastate Commerce Improvement Act" states that a "municipality . . . shall not adopt or enforce an ordinance . . . that creates a protected classification or prohibits discrimination on a basis not contained in state law." (emphasis added).

Little Rock City Attorney Tom Carpenter wrote a detailed analysis in his **City Attorney Opinion No. 2015-001** concerning whether Little Rock could pass a non-discrimination ordinance that would provide some protection against discrimination for some persons if such discrimination was based upon their sexual orientation or gender identification. His short answer is that Little Rock could pass such an ordinance because

**"the proposed ordinance does not create any protected class, nor does it list any prohibited discrimination not already protected by state law."** (emphasis in original).

Although reasonable legal arguments may be advanced by opponents of such ordinances, I believe that Little Rock City Attorney Tom Carpenter has the better argument that ordinances such as Little Rock's

and the one now offered by Aldermen Gray and Petty are legal and not prohibited by A.C.A. § 14-1-401, et seq. I certainly would be prepared to defend the legality of the Gray/Petty ordinance in Court if opponents file suit (which is likely).

I have attached Mr. Carpenter's ten page **City Attorney Opinion** for your review.

I have not had time yet to prepare an additional legal analysis in which I will discuss other reasons and factors to support the City Council's legal authority to enact a non-discrimination ordinance. You should know that Little Rock's ordinance was very limited in its scope and only covered its own employees and contractors seeking to do business with the City. The one now proposed by Aldermen Gray and Petty would cover most employees, tenants, and business customers in Fayetteville as did the initial non-discrimination ordinance.

Therefore, I believe it is likely that once the Intrastate Commerce Improvement Act goes into legal effect in July, an opponent will sue Fayetteville if you have passed the Gray/Petty ordinance.

OFFICE OF THE CITY ATTORNEY

500 West Markham, Ste. 310  
Little Rock, Arkansas 72201

Thomas M. Carpenter  
City Attorney

Telephone (501) 371-4527  
Telefacsimile (501) 371-4675

April 19, 2015

Honorable Joan Adcock  
Director-at-Large, Position 10  
6808 Mablevale Pike  
Little Rock, Arkansas 72209

**CITY ATTORNEY OPINION NO. 2015-001**

**Re: WHETHER PROPOSED ORDINANCE ON CITY ANTI-DISCRIMINATION POLICIES WILL BE VALID AFTER ACT 137 TAKES EFFECT IN JULY, 2015.**

Dear Director Adcock:

This letter contains the opinion of this office to the question you posed about a proposed anti-discrimination ordinance which will be considered by the Little Rock Board of Directors on Tuesday, April 21, 2015.

**QUESTION PRESENTED**

**Whether a proposed ordinance to codify City anti-discrimination practices will be valid after the effective date of Act 137 of 2015 on July 22, 2015.<sup>1</sup>**

**SHORT ANSWER**

**Yes. As to intrastate commerce, the proposed ordinance does not create any protected class, nor does it list any prohibited discrimination not already protected by state law. As to discrimination on activities in interstate commerce, Act 137 by its express terms does not apply.**

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<sup>1</sup> Amendment VII to the Arkansas Constitution provides that no law is effective until 90 days after final adjournment of the General Assembly. The General Assembly is scheduled to adjourn *sine die* on April 22, 2015, so the effective date of Act 137 will be July 22, 2015.

### FACTUAL BACKGROUND

On Tuesday, April 21, 2015, the Board of Directors will consider a proposed ordinance entitled “An ordinance to declare the policy of the City of Little Rock on issues not to be considered in hiring; to declare the policy on companies with which the City contract; to declare an emergency; and, for other purposes.” The ordinance has three basic sections:

1. The first section declares that the City will not discriminate against City vendors “...because of the race, color, creed, religion, sex, national origin, age, disability, marital status, sexual orientation, gender identity, genetic information, political opinions or affiliation of the vendors’ owners.” It also requires that all City departments, divisions, and commissions, comply with this policy;
2. The second section of the ordinance declares that in the delivery of City services, the City will not discriminate “because of race, color, creed, religion, sex, national origin, age, disability, marital status, sexual orientation, gender identity, genetic information, political opinions or affiliation.” It contains a similar requirement for compliance throughout all City departments, division, and commissions; and,
3. The third section notes that the City will not contract with any entity that discriminates “on the basis of race, color, creed, religion, sex, national origin, age, disability, marital status, sexual orientation, gender identity, genetic information.” The section also notes that City bid documents will note this requirement, and will also require that all contracts with the City note the vendor’s agreement to adhere to such a policy.<sup>2</sup>

The first two sections apply to the City. The third section applies only to vendors who wish to do business with the City and be considered for contracts with the City.

The question of whether the ordinance is contrary to state law arises from the fact that Act 137 of the 90<sup>th</sup> Regular Session of the Arkansas General Assembly states “A...municipality...shall not adopt or enforce an ordinance, resolution, rule, or policy that creates a protected classification or

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<sup>2</sup> The provision applies to all contracts. So, whether a bid is decided on the lowest responsible and responsive price bid (RFP), or on the basis of the most qualified firm to do the work (RFQ), or even in a sole source bid where it is impractical and unfeasible to bid for a particular good or service, this provision applies.

prohibits discrimination on a basis not contained in state law.” 2015 ARK. ACTS 137 § 1 (2015). The title of the Act is the “Intrastate Commerce Improvement Act.” *Id.* By its express terms, it applies only to contracts that in no way involve interstate commerce.<sup>3</sup>

## DISCUSSION

### *1. Arkansas law already lists the types of discrimination identified in the proposed ordinance.*

The specific question is whether the proposed ordinance, if passed, would at any time violate Arkansas law as set forth in Act 137 of 2015 (“the Act”). The Act prohibits two actions: (1) The creation of a protected classification; and, (2) A prohibition against discrimination that is not otherwise present in “state law.” The language reads:

14-1-403. Prohibited conduct.

(a) A county, municipality, or other political subdivision of the state shall not adopt or enforce an ordinance, resolution, rule, or policy that creates a protected classification *or prohibits discrimination on a basis not contained in state law.*

(b) *This section does not apply to a rule or policy that pertains only to the employees of a county, municipality, or other political subdivision.*

2015 Ark. Acts 137 § 1 (emphasis added).

Nothing in the proposed ordinance creates a protected classification of individuals. The issue is whether state law already prohibits discrimination for the reasons listed in the proposed ordinance. It does. Because state law already prohibits each kind of discrimination contained in the proposed ordinance, then the proposed ordinances does not violate the plain words of the Act.

The kinds of discrimination the proposed ordinance would prohibit are:

1. Race;
2. Color;

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<sup>3</sup> Because the Act applies only to intrastate commerce, any interstate commerce aspect of the ordinance is not under question. Still, as demonstrated in the opinion, provisions of Article II of the Arkansas Constitution, as well as various Arkansas statutes in existence, and the 14<sup>th</sup> Amendment to the U.S. Constitution clearly establish that the City’s ordinance would not violate the provisions of the Act.



3. Creed;
4. Religion;
5. Sex;
6. National origin;
7. Age;
8. Disability;
9. Marital status;
10. Sexual orientation;
11. Gender Identity; and,
12. Genetic information.<sup>4</sup>

Race and color are expressly protected in the 1874 Arkansas Constitution:

The equality of all persons before the law is recognized, and shall ever remain inviolate; nor shall any citizen ever be deprived of any right, privilege or immunity, nor exempted from any burden or duty, on account of *race, color* or previous conditions.

Article II, § 3, ARK. CONST. In addition to race, religion, national origin, gender, and disability are expressly protected in the Arkansas Civil Rights Act.

The right of an otherwise qualified person to be free from discrimination because of *race, religion, national origin, gender*<sup>5</sup>, or the presence of any sensory, mental, or physical *disability* is recognized as and declared to be a civil right.

Ark. Code Ann. § 16-123-107 (a) (West 2013). Marital status, as part of the broader term “familial status” is referenced in the Arkansas Fair Housing Act.

The opportunity to obtain housing, and other real estate, without discrimination because of *religion, race, color, national origin, sex, disability*, or familial status, as prohibited by this chapter, is recognized and declared to be a civil right.

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<sup>4</sup> In the quotations from state law that follows this list, the words contained in the list are in italics.

<sup>5</sup> For purposes of this provision, “[b]ecause of gender,” means, *but is not limited to*, on account of pregnancy, childbirth, or related medical conditions.” Ark. Code Ann. § 16-123-102 (1) (West 2013) (emphasis added).

Ark. Code Ann. § 16-123-203 (a) (West 2013). Age discrimination is prohibited in the state Age Discrimination Act.

It shall be unlawful for a public employer to:

(1) Fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his her or compensation, terms, conditions, or privileges of employment because of the individual's *age*;

(2) Limit, segregate, or classify employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee because of the individual's *age*....;

Ark. Code Ann. § 21-2-203 (a) (1) (2) (West 2008). Discrimination by public agencies based upon a person's creed is expressly prohibited by state law:

(a) Every state agency shall include in its personnel manual a statement that discrimination by any officer or employee based upon *race, creed, religion, national origin, age, sex, or gender* shall constitute grounds for dismissal.

Ark. Code Ann. § 21-12-103 (West 2008). An employer's discrimination against a potential employee because of genetic information is prohibited. In fact, it is illegal under state law to even seek genetic information from a potential employee:

(a) An employer shall not seek to obtain or use a genetic test or *genetic information* of the employee or the prospective employee for the purposes of distinguishing between or discriminating against or restricting any right or benefit otherwise due or available to an employee or prospective employee.

(b) An employer shall not require a genetic test of or require *genetic information* from the employee or prospective employee for the purpose of distinguishing between or discriminating against or restricting any right or benefit otherwise available to an employee or prospective employee.

Ark. Code Ann. §11-5-403 (West 2014). State law already has specific provisions to prohibit discrimination based upon gender identity and sexual orientation.

(b) (1) "Attribute" means an actual or perceived personal characteristic including without limitation *race, color, religion, ancestry, national origin, socioeconomic status, academic status, disability, gender, gender identity, physical appearance, health condition, or sexual orientation.*

(2) "Bullying" means the intentional harassment, intimidation, humiliation, ridicule, defamation, or threat or incitement of violence by a student against another student or public school employee by a written, verbal, electronic, or physical act that may address an attribute of the other student, public school employee, or person with whom the other student or public school employee is associated and that causes or creates actual or reasonably foreseeable:

(A) Physical harm to a public school employee or student or damages to the public school employee's or student's property; or ...

(C) A hostile educational environment for one (1) or more students or public school employees due to the severity, persistence, or pervasiveness of the act....

Ark. Code Ann. § 6-18-514 (West Supp. 2015). As to sexual orientation, and marital status, state law again has a statute in place to prohibit such discrimination:

Every shelter shall: (1) Develop and implement a written nondiscrimination policy to provide services without regard to *race, religion, color, age, marital status, national origin, ancestry, or sexual preference;*

Ark. Code Ann. § 9-4-106 (1) (West 2009).

In addition, Arkansas law expressly permits the change of official birth records for transgender individuals:

(d) Upon receipt of a certified copy of an order of a court of competent jurisdiction indicating that the sex of an individual born in this state has been changed by surgical procedure and that the individual's name has been changed, the certificate of birth of the individual shall be amended accordingly.

Ark. Code Ann. § 20-18-307(d) (West Supp. 2015). While this statute does not mention discrimination, it is clear that Arkansas does not limit sexual identity to that found at birth.<sup>6</sup>

In short, the proposed ordinance, which only lists types of discrimination that are already prohibited for one reason or another by state law,<sup>7</sup> does not violate the Act. Since the state statutory or constitutional provisions quoted above are already in place, the argument that anything in the proposed ordinance violates state law, and therefore violates the Act, is easily dispatched. After all, “[t]o give the same words a different meaning for each category would be to invent a statute rather than interpret one.” *Burwell v. Hobby Lobby Stores, Inc.*, 134 S.Ct. 2751, 2769 (2014), quoting with approval, *Clark v. Martinez*, 543 U.S. 371, 378 (2005). The City does not create any new form of discrimination in the proposed ordinance.

**2. *The proposed ordinance complies with the Arkansas Constitution Equal Protection Clause.***

As already shown, the proposed ordinance does not list any type of discrimination that is not already a part of Arkansas law. A secondary question is whether the ordinance somehow violates the Equal Protection provision of the Arkansas Constitution. The general provision, more fully cited above, is that “[t]he equality of all persons before the law is recognized, and shall ever remain inviolate....” Article II, § 3, ARK. CONST. In terms of a local governmental interest to prohibit discrimination, what does this mean?

‘[I]f the constitutional conception of “equal protection of the laws” means anything, it must at the very least mean that a bare . . . desire to harm a political unpopular group cannot constitute a *legitimate* governmental interest’ . . . *Government cannot avoid the strictures of equal protection simply be deferring to the wishes or objections of some fraction of the body politic.*

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<sup>6</sup> *Accord, Radtke v. Miscellaneous Drivers & Helpers Union*, 867 F.Supp.2d 1023, 1033 (D. Minn. 2012).

<sup>7</sup> Sections 1 and 2 of the ordinance mandate that the City not discriminate on the basis of “political opinions and affiliation.” This particular requirement is not passed on to private businesses since it is clear that businesses, including corporations, are entitled to First Amendment rights:

We find no basis for the proposition that, in the context of political speech, the Government may impose restrictions on certain disfavored speakers. Both history and logic lead us to this conclusion.

*Citizens United v. Federal Election Comm’n*, 558 U.S. 310, 340 (2009).

*Jegley v. Picado*, 349 Ark. 600, 635, 80 S.W.3d 332, 352 (2002) (citations omitted)(first emphasis supplied)(second emphasis added). The general question in *Jegley* was whether it was proper to criminalize same sex consensual behavior. The Arkansas Supreme Court held that it was not, particularly when the same activities by heterosexual couples were not also criminalized.

The key to the equal protection argument is that the Court's statement effectively provides there is no governmental interest in using taxpayer revenues to fund entities or persons which wish to deny equal protection to some group. The desire to assure that the City revenues do not directly or indirectly support the denial of constitutional rights to the listed groups is the thrust of the proposed ordinance. A legislative body "cannot act, under the cloak of police power or public morality, arbitrarily to invade personal liberties of the individual citizen." See *Jegley*, 349 Ark. at 638, 80 S.W.3d at 353. Since a government cannot act in such a manner, the fact that the proposed ordinance merely states that the City will not act in such a manner, directly or indirectly, is certainly consistent with the Arkansas Constitution, i.e. state law.

**3. *The proposed ordinance is consistent with federal interpretations on certain issues.***

Of the twelve practices prohibited in the proposed ordinance by entities that wish to contract with the City, only two – sexual orientation, gender identity – can even be said to raise a question about prohibited discrimination. Race, color, creed, religion, and national origin, have been standard prohibitions since the 13<sup>th</sup>, 14<sup>th</sup>, and 15<sup>th</sup> Amendments to the U.S. Constitution were ratified. The Equal Protection provision of the 1874 Arkansas Constitution, as demonstrated, contained similar protections.<sup>8</sup>

Sex discrimination became prohibited under federal law through Title VII of the Civil Rights Act of 1964. 42 U.S.C. § 2000e. Age discrimination became prohibited through the Age Discrimination in Employment Act in 1967. 29 U.S.C. § 621, *et seq*; additional protections were offered in the Civil Rights Act of 1991. See, e.g., 29 U.S.C. § 626(e). Disability discrimination was prohibited for projects that received federal funds with the Rehabilitation Act of 1973, and for state and local government projects in the Americans with Disabilities Act of 1991. 29 U.S.C. § 701, *et seq*; 42 U.S.C. § 12101, *et seq*. Genetic information became protected at the federal level by the Genetic Information Non-Discrimination Act of 2008. 42 U.S.C. § 2000ff, *et seq*.

In terms of sex discrimination, this prohibition does not apply merely to the fact that a person is male or female. For example, the U.S. Supreme Court has expressly held that sexual stereotyping

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<sup>8</sup> Indeed, Arkansas was one of the first formerly Confederate states to ratify the 13<sup>th</sup> Amendment after the close of the Civil War. JAMES MCPHERSON, *Battle Cry of Freedom* at 840 (Oxford, 1988).

is prohibited under Title VII. *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989). “Such stereotypical attitudes violate Title VII if they lead to an adverse employment decision.” *Lewis v. Heartland Inns of America, LLC*, 591 F.3d 1033, 1038 (2010). The Eighth Circuit has cited with approval a federal case from the Sixth Circuit that found sex discrimination under Title VII when a firefighter, who wished to identify as female, was targeted for termination because he wished “to express a more feminine appearance.” *Id.*, quoting *Smith v. City of Salem, Ohio*, 378 F.3d 566, 568 (6<sup>th</sup> Cir. 2004). Adverse employment decisions “based on ‘gender non-conforming behavior and appearance’ [are] impermissible under *Price Waterhouse*.” *Lewis*, 591 F.3d at 1039.

At present, the U.S. Department of Labor is seeking comments on proposed rule changes for the Office of Federal Compact Compliance Programs to assure that Executive Order 13672 (July 21, 2014), is properly implemented. The Executive Order specifically prohibits discrimination on the basis of sexual orientation in federal contracting, which means for contracts that involve the expenditure of federal funds. The Notice of Proposed Rulemaking (NPRM) was issued earlier this year. 80 Fed. Reg. 5246-5279 (January 30, 2015). Not only was the NPRM issued because of the Executive Order, but also because current federal guidelines were woefully out of date and did not take account of changes in federal law, or federal court decisions.<sup>9</sup>

#### ***4. The proposed ordinance does not require action by any business in Arkansas.***

The proposed ordinance does not require any business, or individual, in Arkansas to take any affirmative act. There is no requirement that any business within the City adopt any personnel policy because of this ordinance. Instead, the ordinance states that discrimination for certain reasons is not allowed, and that if a company wishes to vie for a contract with the City, it must follow the very policies the City follows. In short, the proposed ordinance would define an aspect of a “responsive” bidder in a price bid, and a “qualified” bidder in a services bid, as one that adhered to the City’s requirements against discrimination, and were willing to execute a document to that effect.

#### **CONCLUSION**

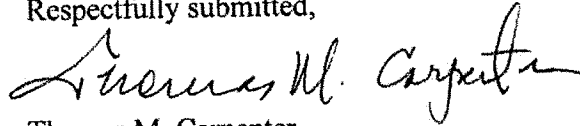
**The proposed ordinance does not violate Arkansas law, specifically Act 137 of 2015, because every prohibition against discrimination named is already named somewhere in state law. Further, the proposed ordinance is consistent with interpretation by the Arkansas**

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<sup>9</sup> These changes included the amendment to Title VII of the Civil Rights Act to Prohibit Sex Discrimination on the Basis of Pregnancy; the Lily Ledbetter Fair Pay Act of 2009; the Family Medical Leave Act of 1993; and cases that identify sexual harassment such as *City of Los Angeles v. Manhart*, 435 U.S. 702 (1976); and same sex harassment such as *Oncale v. Sundowner Offshore Servs.*, 523 U.S. 75, 78 (1998). See 80 Fed. Reg. 5246, 5249 and nn. 18-23.

**Supreme Court of the Equal Protection clause of the Arkansas Constitution. Finally, the proposed ordinance is also in conformity with federal law and regulations that bar discrimination.**

Respectfully submitted,



Thomas M. Carpenter  
City Attorney

TMC:ct

- cc. Mayor Stodola and Members of the Board of Directors (via email)
- Bruce T. Moore, City Manager (via email)
- James E. Jones, Assistant City Manager (via email)
- William C. Mann, III, Chief Deputy City Attorney (via email)
- Bonnie Engster, Law Office Coordinator

Handed out at the  
June 16, 2015 City Council meeting  
Uniform Civil Rights Protection

**Amendment 1**

Section (C) of Definitions shall be amended to replace the last sentence thereof as follows: *Gender identity corresponds to the readily observable biological and scientifically determinable fact of a person being either male or female at birth.*



## **Amendment 2**

Section 1 shall be amended to provide that the entire ordinance be printed on the ballot. Further the City of Fayetteville shall provide no summary statement or shortened description of the ordinance to the Washington County Clerk for printing on the ballot.

### **Amendment 3**

Section 1 shall be amended to provide that no City of Fayetteville resources shall, directly or indirectly, be used to promote the approval of the ordinance by the Fayetteville voters.

#### **Amendment 4**

Section 1 shall be amended to provide that the scheduling of an election shall be held in abeyance until the Attorney General of the State of Arkansas has rendered an opinion as to whether the proposed ordinance violates A.C.A. § 14-1-401. If the Attorney General determines that the proposed ordinance is in violation of the foregoing statute, then the ordinance shall be considered void ab initio and no election shall be held.

## **Amendment 5**

Section 2 shall be amended to provide that, if the ordinance is rejected by the voters of the City of Fayetteville, the City of Fayetteville shall not enact another ordinance concerning discrimination on the basis of sexual orientation and gender identity for a minimum of two (2) years from the date of the election which rejected the ordinance. This provision alone shall survive the rejection of the ordinance by the voters.

## Amendment 6

Section (A) of the **Discrimination Offense** shall be amended to provide that the observance or practice of gender identity or sexual orientation shall be subject to the same limitation as set forth in A.C.A. § 16-123-103(b) for religious observance or practice.

Solely for reference purposes: A.C.A. § 16-123-103(b)

*It shall not constitute employment discrimination under this subchapter for an employer to refuse to accommodate the religious observance or practice of an employee or prospective employee if the employer demonstrates that he is unable to reasonably make such accommodation without undue hardship on the conduct of the employer's business.*

## **Amendment 7**

Section 1 shall be amended that the ordinance shall be put to a vote at the next regular general election in November 2016.

## **Amendment 8**

**Complaint Procedures and Enforcement Section (D)** shall be amended to provide that notice of the complaint be provided to the Respondent with notice in a similar manner as the service of a summons in a civil suit. Respondent shall have 30 days after service to respond in writing to the complaint. Any hearing shall be set not earlier than 60 days after receipt by Civil Rights Commission of the written response by Respondent.

## **Amendment 9**

**Complaint Procedures and Enforcement Section (E)** shall be amended to provide that the Arkansas rules of evidence, including but not limited to the exclusion of hearsay evidence, shall apply to the conduct of the hearing before the Civil Rights Commission.



**Amendment 10**

**Complaint Procedures and Enforcement** Section (E) shall be amended to provide that the Respondent shall be presumed innocent of a violation until determined guilty beyond a reasonable doubt by the Civil Rights Commission.

## **Amendment 11**

**Complaint Procedures and Enforcement** Section (E) shall be amended to provide that the Respondent shall have the right afforded in the U.S. Constitution, Amendment 6, to confront each witness against her at the hearing.

## **Amendment 12**

**Complaint Procedures and Enforcement** Section (E) shall be amended to provide that the Respondent shall have the right to appeal any adverse decision against him to the State Circuit Court.

### **Amendment 13**

**Complaint Procedures and Enforcement** Section (E) shall be amended to provide that it shall be a defense to any alleged discrimination that the Respondent holds a good faith belief in traditional marriage and that her allegedly discriminatory acts were a reasonable expression of her belief in the sanctity of traditional marriage. For these purposes, "traditional marriage" is to be defined as a marriage of one man to one woman.

## **Amendment 14**

**Complaint Procedures and Enforcement Section (F)** shall be amended to provide that Fayetteville City Code § 10.99 **General Penalty** shall not apply to impose imprisonment on anyone cited and fined under this ordinance.

# NORTHWEST ARKANSAS Democrat Gazette

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## AFFIDAVIT OF PUBLICATION

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CITY OF FAYETTEVILLE  
CITY CLERK'S OFFICE

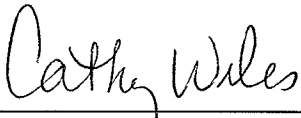
I, Cathy Wiles, do solemnly swear that I am the Legal Clerk of the Northwest Arkansas Democrat Gazette, printed and published in Washington and Benton County, Arkansas, and of bona fide circulation, that from my own personal knowledge and reference to the files of said publication, the advertisement of:

CITY OF FAYETTEVILLE  
Ord. 5781

Was inserted in the Northwest Arkansas Democrat  
Gazette on:

June 25, 2015

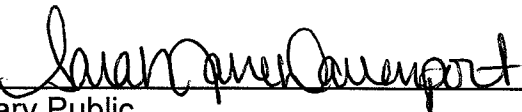
Publication Charges: \$ 557.71



Cathy Wiles

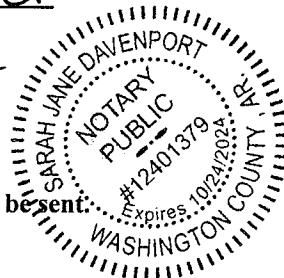
SEE ATTACHED

Subscribed and sworn to before me  
This 29 day of June, 2015.



Notary Public

My Commission Expires: 10/24/24



**\*\*NOTE\*\***

Please do not pay from Affidavit. Invoice will be sent.

**ORDINANCE NO. 5781**



AN ORDINANCE TO ENSURE UNIFORM NONDISCRIMINATION PROTECTIONS WITHIN THE CITY OF FAYETTEVILLE FOR GROUPS ALREADY PROTECTED TO VARYING DEGREES THROUGHOUT STATE LAW.

**WHEREAS**, laws including the Civil Rights Act (42 U.S.C § 2000e, et seq.), the Arkansas Civil Rights Act of 1993 (A.C.A. § 16-123-101 et seq.) and the Arkansas Fair Housing Act (A.C.A. § 16-123-201 et seq.) provide Fayetteville citizens with protections against discrimination on the basis of race, ethnicity, national origin, age, sex, religion and disability; and

**WHEREAS**, the General Assembly has determined that attributes such as "gender identity" and "sexual orientation" require protection (A.C.A. § 6-18-514 (b)(1)); and

**WHEREAS**, Fayetteville citizens deserve fair, equal and dignified treatment under the law; and

**WHEREAS**, Fayetteville seeks to attract a diverse and creative workforce by promoting itself to prospective businesses and employees as a fair, tolerant and welcoming community; and

**WHEREAS**, the protected classifications in A.C.A. § 6-18-514 (b)(1) for persons on the basis of gender identity and sexual orientation should also be protected by the City of Fayetteville to prohibit those isolated but improper circumstances when some person or business might intentionally discriminate against our gay, lesbian, bisexual and transgender citizens; and

**WHEREAS**, in response to the concerns recently expressed by the citizens of Fayetteville on a similar issue, the Fayetteville City Council recognizes their interest in participating in the democratic process and invites the citizens to decide whether gender identity and sexual orientation should also be protected by the City of Fayetteville.

**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 hereby refers this ordinance to the Fayetteville voters for their enactment or rejection in a Special Election to be held on September 8, 2015. The operative provisions that will be enacted by Fayetteville citizens into the Fayetteville Code if approved by a majority of Fayetteville citizens voting in the election shall be as follows:

**"Uniform Civil Rights Protection**

**Purpose**

Fayetteville is a welcoming, fair and tolerant city which endeavors to ensure that all of its citizens and visitors will be free from unfair discrimination. Since Federal and State law already protect citizens from most discrimination, the Uniform Civil Rights Protection Article shall extend existing protections to lesbian, gay, bisexual, and transgender citizens and visitors as recognized elsewhere in state law.

**Definitions**

(A) *"Employee"*. This definition adopts and incorporates herein the definition of "Employee" as stated in the Arkansas Civil Rights Act of 1993, A.C.A. § 16-123-102 (4).

(B) *"Employer"*. This definition adopts and incorporates herein the definition of "Employer" as stated in the Arkansas Civil Rights Act of 1993, A.C.A. § 16-123-102 (5).

(C) *"Gender Identity"* means an individual's own, bona fide sense of being male or female, and the related external characteristics and behaviors that are socially defined as either masculine or feminine. Gender identity may or may not correspond to the sex assigned to the individual at birth.

(D) *"Housing accommodation"*. This definition adopts and incorporates herein the definition of "Housing accommodation" as stated in the Arkansas Fair Housing Act of 1993, A.C.A. § 16-123-202 (1).

(E) *"Place of public resort, accommodation, assemblage or amusement"*. This definition adopts and incorporates herein the definition of "Place of public resort, accommodation, assemblage or amusement" as stated in the Arkansas Civil Rights Act of 1993, A.C.A. § 16-123-102 (7). Furthermore, this shall not mean any religious facility or other religious institution including their owned and operated schools and daycare facilities.

(F) *"Real estate broker or salesman"*. This definition adopts and incorporates herein the definition of "Real estate broker or salesman" as stated in the Arkansas Fair Housing Act of 1993, A.C.A. § 16-123-202 (2).

(G) *"Real estate transaction"*. This definition adopts and incorporates herein the definition of "Real estate transaction" as stated in the Arkansas Fair Housing Act of 1993, A.C.A. § 16-123-202 (3).

(H) *"Real property"*. This definition adopts and incorporates herein the definition of "Real property" as stated in the Arkansas Fair Housing Act of 1993, A.C.A. § 16-123-202 (4).

(I) *"Sexual Orientation"* means heterosexuality, homosexuality or bisexuality by practice, identity, or expression.

**Applicability and Exemptions**

(A) The **Uniform Civil Rights Protection Article** is only applicable to discriminatory actions occurring within the Fayetteville city limits.

(B) This Article adopts and incorporates herein the entirety of A.C.A. § 16-123-103 **Applicability** of the Arkansas Civil Rights Act.

(C) Churches, religious schools and daycare facilities, and religious organizations of any kind shall be exempt from this Article.

**Discrimination Offense**

(A) The right of an otherwise qualified person to be free from discrimination because of sexual orientation and gender identity is the same right of every citizen to be free from discrimination because of race, religion, national origin, gender and disability as recognized and protected by the Arkansas Civil Rights Act of 1993.

(B) The **Uniform Civil Rights Protection Article** adopts and incorporates herein these rights as quoted below:

- (1) The right to obtain and hold employment without discrimination;
- (2) The right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement;
- (3) The right to engage in property transactions (including sales and leases) without discrimination;
- (4) The right to engage in credit and other contractual transactions without discrimination; and

(5) The right to vote and participate fully in the political process.

(C) A person engaging in a real estate transaction, or a real estate broker or salesman, shall not on the basis of sexual orientation or gender identity engage in any conduct likewise prohibited by A.C.A. § 16-123-204 **Prohibited Acts** of the Arkansas Fair Housing Act on the basis of other enumerated attributes.

(D) No employer shall discriminate against nor threaten any individual because such individual in good faith has opposed any act or practice made unlawful by this section or because such person in good faith made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing related to the **Uniform Civil Rights Protection Article**.

#### **Establishment and Duties of a Civil Rights Commission**

There is hereby established the Civil Rights Commission. The Civil Rights Commission shall review and decide complaints of alleged discrimination in violation of the **Uniform Civil Rights Protection Article**. The Commission will provide to the City Council an annual accounting of the number of complaints received and the outcomes.

#### **Composition**

(A) The Civil Rights Commission shall consist of seven members composed of the following:

(1) Two (2) representatives of the business community;

(2) Two (2) owners or managers of rental property;

(3) One (1) representative with experience in Human Resources or employment law;

(4) Two (2) citizens at large, at least one of whom identifies as gay, lesbian, bisexual, or transgender.

(B) Members will be appointed by the City Council, each for a term of three years. Appointments shall be staggered so that each year either two or three members' terms shall be available for appointment by the Nominating Committee.

(C) Members of the Civil Rights Commission may be removed from office by the City Council for cause upon written charges and after a public hearing.

#### **Meetings**

(A) The Civil Rights Commission shall meet for an organizational meeting within 60 days after the citizens enact this ordinance and every year thereafter following the appointment of new members.

(B) Meetings shall be held at the call of the chairperson.

(C) A majority of the membership of the Civil Rights Commission shall constitute a quorum.

(D) All meetings shall be open to the public.

(E) The Civil Rights Commission shall adopt rules necessary to the conduct for its affairs, and in keeping with the provisions of the City's **Uniform Civil Rights Protection Article**.

#### **Staff Support**

The City Attorney's office shall receive complaints on behalf of the Civil Rights Commission and assist the Commission in performing its duties and carrying out its responsibilities.

#### **Complaint Procedure and Enforcement**

(A) A person asserting a claim of discrimination, herein referred to as the "Complainant", pursuant to this **Uniform Civil Rights Protection Article** must present such claim in writing to the City Attorney's office no more than ninety (90) days after the person has knowledge of the facts giving rise to the claim of discrimination. The City Attorney's office will, within two (2) business days, notify the Civil Rights Commission that a complaint was received.

(B) Informal mediation or conciliation between the alleged discriminator, herein referred to as the "Respondent", and Complainant shall be attempted by the City within four business days and before any other enforcement measures can begin. Such mediation or conciliation measures shall be pursued in accordance with the confidentiality protections provided by A.C.A. § 16-7-206. Mediation and conciliation should be concluded within two weeks after the complaint is received unless both parties agree to further efforts.

(C) If conciliation efforts are successful in resolving the complaint, the Civil Rights Commission will be notified of resolution and take no further action.

(D) If conciliation efforts fail to resolve the complaint, the Civil Rights Commission shall notify both parties that a hearing will be conducted at a specified place and time not more than fourteen (14) business days after the conclusion of conciliation efforts but not less than five (5) business days after issuance of notice of the hearing.

(E) Conduct of the Hearing:

(1) The Civil Rights Commission shall review the initial complaint and may receive any additional evidence from the Complainant.

(2) The Respondent shall have an opportunity to explain or provide evidence to rebut any allegations of illegal discriminatory acts. No person shall be compelled to be a witness against himself in any formal or informal hearing.

(3) After considering all the evidence presented, if the Civil Rights Commission determines that the Respondent has violated this Article, the Commission shall forward the original claim and their findings to the City Prosecutor.

(F) Penalty:

(1) A person's first violation of this ordinance shall carry a penalty of up to a \$100.00 fine. Fayetteville City Code § 10.99 **General Penalty** shall apply to any subsequent violations.

(2) No violation of this Article shall be construed to be a misdemeanor or felony.

#### **Severability**

if any part, provision or section of this ordinance is held invalid or unconstitutional it shall be severed from the remainder which shall remain valid and enforceable."

**Section 2:** That the City Council for the City of Fayetteville, Arkansas hereby determines that if the Fayetteville voters fail to approve the referred ordinance, the ordinance will not go into effect; but if the voters approve the ordinance, the ordinance quoted in Section 1 will be enacted into the Fayetteville Code and become effective sixty (60) days after the approving election.

**PASSED and APPROVED** this 16th day of June, 2015.

APPROVED:

ATTEST:

By: \_\_\_\_\_

By: \_\_\_\_\_

LIONELD JORDAN, Mayor

SONDRA E. SMITH, City Clerk Treasurer