

ORDINANCE NO. _____

Entitled: An ordinance pursuant to Section ____ of the Cheyenne Municipal Code adding Section _____. Illegal Discrimination.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CHEYENNE, WYOMING:

WHEREAS, the Cheyenne City Council specifically finds as follows:

1. The City of Cheyenne (“City”) is composed of and welcomes diverse individuals, groups and communities;
2. The City values this diversity and desires to encourage and allow all residents and visitors to contribute to the commercial life and activities of Cheyenne, and to the cultural and social life of the City;
3. Discrimination and discriminatory practices based on sexual orientation or gender identity (“Discrimination”) inhibit and restrict the economic growth and opportunities of Cheyenne, its citizens and visitors, and the general cultural, social and commercial activities and life of the City;
4. Prohibition and regulation of Discrimination will attract new residents and businesses to the City, will encourage visitors and tourists to come to Cheyenne, and is necessary to raise and maximize revenue for the City in order that Cheyenne may provide more and better services and amenities to insure growth and acceptable quality of life for the City;
5. Discrimination disturbs or jeopardizes the public health, safety, peace and morality of the City;
6. Discrimination must be prohibited and regulated in order to protect the health, safety and welfare of the City; and
7. The City must exercise its powers to the fullest extent allowed by the Wyoming Constitution and statutes to prohibit and regulate Discrimination.

NOW, THEREFORE, the Cheyenne City Council enacts the following ordinance:

Chapter ____ - Illegal Discrimination.

Sec. ____ . Purpose and Intent.

- A. Consistent with the findings of the City Council, it is the intent of the City of Cheyenne that no person shall be discriminated against based upon his or her actual or perceived sexual orientation or gender identity or expression, as more specifically set out in this Chapter.
- B. Consistent with the findings of the City Council, and incorporating those findings, this Chapter is enacted to exercise, to the fullest extent allowed by the Wyoming Constitution and statutes, the powers of the City of Cheyenne to prohibit such discrimination in order to encourage the economic growth of the City, raise revenue for the City for the benefit of its residents, prevent activities that disturb or jeopardize the public health, safety, peace or morality of the City, provide for the health, safety and welfare of the City, and to generally encourage the growth and economic expansion of the City and the ability of its residents to fully participate in the cultural, social and economic life of the City.

Sec. ____ . Definitions.

The following definitions apply. Whenever any word or phrase is not defined in this Chapter but is defined elsewhere in the municipal code, that definition shall apply

“Gender identity or expression” means an actual or perceived gender related identity, expression, or behavior, regardless of the individual’s sex at birth.

“Housing facility” means a building or portion of a building, whether constructed or to be constructed, that is or will be used as the home, domicile, residence or sleeping quarters by its occupants.

“Public accommodation” means a place, including those owned or operated by the city and its agencies, however organized, offering services, facilities or goods to or soliciting patronage from members of the general public. This includes places of lodging, establishments serving food or drink, auditoriums and other places of public gathering, shopping facilities, medical and other professional service establishments, public transportation facilities, libraries and other professional service establishments, places of entertainment and recreation, daycare centers and other social service establishments and all places of education.

“Public accommodation” does not include an institution, club or place of accommodation that proves that it is, by its very nature, distinctly private. An institution, club, or place of accommodation may not be considered distinctly private if it has more than one hundred (100) members, provides regular meal service, and regularly receives payment for dues, fees, use of space, facilities, services, meals, or beverages, directly or indirectly, from or on behalf of non-

members, for the furtherance of trade or business. For the purposes of this definition, any lodge of a recognized national fraternal organization is considered by its nature distinctly private.

“Sexual orientation” means actual or perceived heterosexuality, bisexuality or homosexuality.

“Employer” means any person or entity doing business within the City of Cheyenne who has one or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person or entity. “Employer” includes the City of Cheyenne and its agencies.

Sec. ____ . Prohibited Acts of Discrimination – Employment.

- A. It is a discriminatory or unfair employment practice and shall be unlawful:
 - i. For an employer to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation or the terms, conditions or privileges of employment against a person on the basis of sexual orientation or gender identity or expression;
 - ii. For a person, an employer, an employment agency, a labor organization, or its employees or members to discriminate in matter of employment or membership against any person on the basis of sexual orientation or gender identity or expression.
 - iii. For an employer to reduce the wage of any employee to comply with this Chapter.

Sec. ____ . Prohibited Acts of Discrimination – Public Accommodation.

It shall be unlawful for any place of public accommodation to discriminate on account of sexual orientation or gender identity or expression in offering services, facilities or goods to or soliciting patronage from members of the general public.

Sec. ____ . Prohibited Acts of Discrimination – Housing.

It shall be unlawful for any person, owner, manager, employee or entity whose business includes engaging in any residential real estate related transactions to discriminate on account of sexual orientation or gender identity or expression in the sale, lease or rental of any housing facility, or to otherwise discriminate in the terms, conditions, maintenance, improvement or repair of any housing facility. The rental of sleeping rooms in a private residence designed as a single dwelling unit in which the owner also resides is excluded from this section provided that the owner rents no more than three (3) sleeping rooms within the residence.

Sec. _____. Retaliation.

No person shall coerce, threaten, discharge, expel, blacklist or otherwise retaliate against another person for opposing any practices prohibited by this Chapter, or making a complaint or assisting in an investigations or proceeding regarding an alleged violation of this Chapter, nor shall any person require, request, conspire with, assist or coerce another person to coerce, threaten, expel, blacklist or retaliate against a person for making a complaint or assisting in an investigation or proceeding.

Sec. _____. First Amendment Rights Reserved.

This Chapter shall not be interpreted to infringe upon the free exercise of religion protected by the First Amendment of the United States Constitution and Art. 1, Sec. 18 of the Wyoming Constitution.

Sec. _____. Procedure for Filing Complaints/Responses.

- A. Any person who claims to have been subjected to discrimination in employment, public accommodation or housing on the basis of sexual orientation or gender identity or expression within the City's jurisdiction may file a complaint with the Mayor or his/her designee. A complaint may also be filed by the Mayor or his/her designee if they have reasonable cause to believe that a person has discriminated against another person in employment, public accommodation or housing on the basis of sexual orientation or gender identity or expression. A complaint must be filed within ninety (90) calendar days after an alleged violation under this Chapter has occurred or, in the case of ongoing discrimination, within ninety (90) days of the most recent incident of alleged discrimination.
- B. A complaint must be in writing, made under oath and notarized, and contain the following information:
 - i. The Complainant's name, address, telephone number and signature;
 - ii. The date or dates the alleged discriminatory action occurred;
 - iii. A statement of the facts upon which the allegation of a discriminatory action occurred;

- iv. The name of the person alleged to have engaged in discriminatory action or facts sufficient to identify the person (Respondent) ; and
 - v. Whether a complaint concerning the matter has been filed with another agency and the disposition of any such complaint.
- C. Upon receipt of the complaint, the Mayor or his/her designee shall review the allegations and determine whether they fall within the scope of this Chapter. If the Mayor or his/her designee determines the allegations do not fall within the scope of this Chapter, the Mayor shall dismiss the complaint. If the Mayor or his/her designee determines the complaint does fall within the scope of this Chapter, the Mayor or his designee shall:
- i. Provide the Respondent named in the complaint written notice that a complaint alleging discriminatory action has been filed against the Respondent;
 - ii. Furnish a copy of the complaint to the Respondent; and
 - iii. Advise the Respondent of his or her procedural rights and obligations, including the right to file a response in writing, signed under oath and notarized within fifteen (15) calendar days after service of notice of the complaint.
- D. Not later than fifteen (15) days after service of notice and copy of the complaint, a Respondent may file a response to the complaint. The response must be in writing, signed under oath, notarized and contain the following information:
- i. The Respondent's name, address, telephone number, and signature of the Respondent or, if represented by legal counsel, the Respondent's attorney; and
 - ii. A statement of facts in response to the allegations in the complaint, including any facts relating to a defense or exemption.

Sec. _____. Investigation and Efforts to Resolve Complaint.

- A. Upon receipt of the response, or if none is filed upon determining the complaint falls within the scope of this Chapter, the Mayor shall appoint a person or entity ("Appointee") with the requisite knowledge, skills and expertise to investigate and attempt to reconcile the complaint. In the event the complaint involves persons employed by the City as the Respondent, the Appointee shall be an independent third party. Promptly upon receipt of the complaint, the Appointee shall commence an investigation to determine the facts underlying the complaint and whether there is reasonable cause to believe the Respondent committed a discriminatory act.
- B. In connection with any investigation of a complaint filed under this Chapter, the Appointee shall seek the voluntary cooperation of any person to:

- i. Obtain access to premises, records, documents, individuals and any other potential source of information;
 - ii. Examine, record and copy necessary materials; and,
 - iii. Take and record testimony or statements of any person reasonably necessary for the furtherance of the investigation.
- C. The Appointee may in coordination with the City Attorney issue subpoenas to compel the attendance of witnesses or production of relevant materials or documents.
- D. The Mayor may dismiss a complaint during the investigation if it is determined that:
 - i. The complaint was not filed within the required time period;
 - ii. The location of the alleged discriminatory action is not within the City's jurisdiction;
 - iii. The alleged discriminatory act is not a violation of this Chapter;
 - iv. The Complainant fails to cooperate with the investigation or, in the event an agreement is reached to resolve the complaint, refuses to comply with the agreement;
 - v. The Complainant cannot be located.
- E. If the Appointee determines on the basis of the investigation that there is reasonable cause to believe the Respondent committed a discriminatory act, the Appointee shall attempt to reach a just resolution of the complaint, including obtaining assurances that the Respondent will satisfactorily remedy any violation of the Complainant's rights and take action to ensure the elimination of present or future discriminatory actions.
 - i. An agreement resolving a complaint may include obtaining the Respondent's agreement to abstain from discriminatory practices in the future, adopt and pursue a policy of non-discrimination and undergo sensitivity training.
 - ii. An agreement executed under this section must be in writing in a form approved by the City Attorney and must be signed by the Complainant and Respondent.
 - iii. After execution of an agreement resolving the complaint, the Mayor or the Mayor's designee shall dismiss the complaint.

Sec. _____. Disposition of Unresolved Complaints.

In the event the Appointee is unable to reach a just resolution of a complaint after determining that reasonable cause exists to believe a discriminatory action has occurred, the Mayor or the Mayor's designee shall refer the case to the City Attorney. If the City Attorney agrees that reasonable cause exists to believe a discriminatory action has

occurred, the City Attorney shall provide written notification to the Respondent and Complainant that an action to enforce this Chapter may be initiated in municipal court. If the City Attorney does not agree that reasonable cause exists to believe a discriminatory action has occurred, the City Attorney shall notify the Respondent and Complainant and dismiss the complaint.

Sec. _____. Penalties.

Any violation of the Chapter shall be an offense punishable by a fine of up to \$750.00, a jail sentence of up to six (6) months, or both.

Sec. _____. Severability.

If any section, subsection, sentence, clause, phrase or word of this Chapter is for any reason held to be invalid or unconstitutional, it is the City Council's that the remaining portions continue in full force and effect.