

ORDINANCES OF THE CITY OF HELENA, MONTANA

ORDINANCE NO. 3162

AN ORDINANCE PROHIBITING CERTAIN FORMS OF DISCRIMINATION IN THE CITY OF HELENA

NOW, THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE
CITY OF HELENA, MONTANA:

That Title 1, General Provisions, of the Helena City Code
is hereby amended by adding this following new Chapter 8:

CHAPTER 8

ILLEGAL DISCRIMINATION

SECTION:

- 1-8-1: Intent and Purpose
- 1-8-2: Definitions
- 1-8-3: Employment Discrimination Prohibited
- 1-8-4: Discrimination in Public Accommodations Prohibited
- 1-8-5: Housing Discrimination Prohibited
- 1-8-6: Retaliation Prohibited
- 1-8-7: Violation - Civil Remedy - Exhaustion of Human Rights
Bureau Remedy
- 1-8-8: Severability

1-8-1: INTENT AND PURPOSE: State and/or federal law prohibit the denial of civil rights or discrimination on the basis of age, race, color, national origin, ancestry, religion, creed, sex, pregnancy, marital status, familial status (solely for housing), and physical or mental disability. In addition to these protections, it is the intent of the City of Helena that no person shall be denied his or her civil rights or be discriminated against based upon his or her sexual orientation or gender identity or expression.

The City Commission declares that such discrimination prohibitions are necessary and desirable because existing state and federal laws regarding discrimination do not expressly or clearly address all discriminatory acts reported by the City's diverse residents. Therefore, the City deems it necessary to

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adopt local regulations adapted to the needs of its citizens. Nothing in this title is intended, however, to conflict with such state and federal laws, or to alter or abridge other rights, protections, or privileges secured by state or federal law, including state and federal constitutional protections of freedom of speech and exercise of religion.

1-8-2: DEFINITIONS: As used in this title, unless the context requires otherwise, the following definitions apply:

DISCRIMINATION: "Discrimination", "discriminate" or "discriminatory" means any act, policy, or practice that has the effect of unfavorably subjecting any person to different or separate treatment on the basis of their sexual orientation or gender identity or expression, or because of their association with a person or group of people so identified. "Discrimination," "discriminate" or "discriminatory" also means any act, policy, or practice that has the effect of unfavorably subjecting any person to different or separate treatment on the belief that a person has a particular sexual orientation or gender identity or expression, even if that belief is incorrect.

EMPLOYEE: An individual employed by an employer.

EMPLOYER: An employer of one or more persons or an agent of the employer, but not including a fraternal, charitable, or religious association or corporation unless the association or corporation is organized either for private profit or to provide accommodations or services that are

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available on a non-membership basis.

EMPLOYMENT AGENCY:

A person undertaking to procure employees or opportunities to work.

GENDER IDENTITY OR EXPRESSION:

A gender-related identity, expression, or behavior, regardless of the individual's sex at birth.

HOUSING ACCOMODATION:

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 of its occupants.

LABOR ORGANIZATION:

An organization or an agent of an organization organized for the purpose, in whole or in part, of collective bargaining, of dealing with employers concerning grievances or terms or conditions of employment, or of other mutual aid and protection of employees.

PERSON:

One or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated employees' associations, employers, employment agencies, organizations, or labor organizations.

PUBLIC ACCOMMODATION:

A place that caters or offers its services, goods, or facilities to the general public, subject only to the conditions and limitations established by law and applicable to all persons. It includes,

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without limitation, a public inn, restaurant, eating house, hotel, roadhouse, place where food or alcoholic beverages or malt liquors are sold for consumption, motel, soda fountain, soft drink parlor, tavern, nightclub, trailer park, resort, campground, barbering, cosmetology, electrology, esthetics, or manicuring salon or shop, bathroom, rest-house, theater, swimming pool, skating rink, golf course, cafe, ice cream parlor, transportation company, hospital, and all other public amusement and business establishments.

Public accommodation does not include an institution, club, or place of accommodation that proves that it is, by its nature, distinctly private. An institution, club, or place of accommodation may not be considered by its nature distinctly private if it has more than 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 nonmembers, 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:

Heterosexuality, bisexuality, or homosexuality.

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1-8-3: EMPLOYMENT DISCRIMINATION PROHIBITED:

- A. No employer shall discriminate in the employment, failure to hire, refusal to hire, compensation, work classification, terms, conditions, or privileges of employment, including promotion, demotion, or termination of employment.
- B. No employer shall fail or refuse to refer for employment, or give negative information to a potential employer of an individual, in such a manner that would deprive or limit an individual's employment opportunities or that would otherwise adversely affect an individual's status as an applicant or prospective employee, for a discriminatory reason.
- C. No labor organization shall discriminate in limiting membership, conditions of membership, or termination of membership of any person in any labor union or apprenticeship program.
- D. No employment agency shall discriminate in the procurement or recruitment of any person for possible employment with an employer.

1-8-4: DISCRIMINATION IN PUBLIC ACCOMODATIONS PROHIBITED: It shall be unlawful for a place of public accommodation to deny, directly or indirectly, any person full and equal access or enjoyment of the goods, services, activities, facilities, privileges, advantages, and accommodations for a discriminatory reason. However, in any place of public accommodation where users ordinarily appear in the nude, users may be required to use the facilities designated for their anatomical sex, regardless of their gender identity. Such requirement does not constitute unlawful discrimination for purposes of this Section 1-8-4.

1-8-5: HOUSING DISCRIMINATION PROHIBITED: It is unlawful for any person, owner, manager, employee, or any entity whose business includes engaging in any residential real estate-related transactions to discriminate in the sale, lease or rental of any housing facility, or to otherwise discriminate in

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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 sleeping rooms within the residence.

1-8-6: RETALIATION PROHIBITED: No person shall coerce, threaten, discharge, expel, blacklist, or otherwise retaliate against another person for opposing any practices prohibited by this title, making a complaint, or assisting in an investigation or proceeding regarding an alleged violation of this title; nor shall any person require, request, conspire with, assist, or coerce another person to retaliate against a person for making a complaint or assisting in an investigation or proceeding.

1-8-7: VIOLATION - CIVIL REMEDY - EXHAUSTION OF HUMAN RIGHTS BUREAU REMEDY: Any illegal discrimination specifically addressed by Montana state law shall be submitted to the Montana Department of Labor & Industry, Human Rights Bureau, pursuant to Title 49, Chapters 2 and 3, Montana Code Annotated (MCA), for processing by the State of Montana.

Any person claiming a violation of this chapter may seek civil remedies, injunctive relief, attorney fees or other equitable relief by petitioning the Helena Municipal Court. Prior to the filing of any petition in Helena Municipal Court under this chapter, a person must have:

- A. filed or sought to file a timely complaint with the Montana Human Rights Bureau alleging discrimination in employment, public accommodations or housing, or retaliation; and
- B. received a written disposition of the complaint from the Montana Human Rights Bureau, Montana Department of Labor & Industry Hearings Bureau, Montana Human Rights Commission, or any Montana court indicating that the acts of alleged discrimination or retaliation underlying the complaint do not fall within the scope of the Montana Human Rights Act.

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For purposes of this Section 1-8-7, the term "timely" shall mean filed with the Montana Human Rights Bureau within the timeframes set forth in § 49-2-501, MCA.

Any person claiming a violation of this chapter must file a petition with the Helena Municipal Court within ninety (90) days of receipt of the written disposition referenced in Section 1-8-7(B) above.

The initiation of or the granting of relief under a grievance procedure shall not preclude or limit any other claims or remedies available under this chapter.

1-8-8: SEVERABILITY: If any section, subsection, sentence, clause, phrase, or word of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City Commission hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase, and words thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or words have been declared invalid or unconstitutional, and if for any reason this ordinance should be declared invalid or unconstitutional, then the remaining ordinance provisions will remain in full force and effect.

(Ord. 3162, 12-17-2012)

FIRST PASSED BY THE COMMISSION OF THE CITY OF HELENA, MONTANA, THIS 3rd DAY OF DECEMBER, 2012.

ATTEST: XXXXXXXXXX
MAYOR

XXXXXXXXXX
CLERK OF THE COMMISSION

FINALLY PASSED BY THE COMMISSION OF THE CITY OF HELENA, MONTANA, THIS 17th DAY OF DECEMBER, 2012.

ATTEST: /S/ James E. Smith
MAYOR

/S/ Debbie Havens
CLERK OF THE COMMISSION