

CHAPTER 11
NON-DISCRIMINATION IN EMPLOYMENT AND HOUSING

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5-11-1 PURPOSE AND DECLARATION OF POLICY.

A. The City has determined that discrimination on the basis of sexual orientation and/or gender identity/expression shall be prohibited, as set out in this Chapter, in order to help ensure that all persons, regardless of sexual orientation and/or gender expression/identity, are afforded equal opportunities in employment and housing.

B. It is hereby declared that every person in the City has the right to work and to earn wages through gainful employment and that every person has the right to seek housing. Discriminatory practices are detrimental because they impede the social and economic progress by preventing all of the City's occupants from contributing to the cultural, spiritual, social, and commercial life of the community. Such contributions are fundamental components of the City's growth, vitality, and prosperity.

C. It is the intent of this Chapter that all persons be treated fairly and equally. It is the express intent of this Chapter to foster and support fair and equal treatment under the law to all people in the City. The denial of fair and equal treatment under the law in employment or housing due to sexual orientation and/or gender identity/expression is detrimental to the health, safety, and welfare of the City's occupants, and such damages a city's economic well-being.

D. This Chapter shall be deemed an exercise of the police power of the City for the protection of the public welfare, prosperity, health and peace of the City, its residents, occupants, and the community at large.

E. The prohibitions against discriminatory acts, as provided for in this Chapter, are intended to supplement State and Federal Civil Rights Laws and Regulations prohibiting discrimination in the areas of employment and housing; therefore, this Chapter shall not apply to complaints alleging discrimination on a basis proscribed under State or Federal law (e.g. race, color, religious creed, ancestry, age, sex, national origin, familial status, veteran's status, and/or disability).

F. Nothing in this Chapter is intended to alter or abridge other rights, protections, or privileges secured under the State and/or Federal law, including religious rights and protections. This Chapter shall not create a private cause of action, nor shall it create any right or remedy that is the same or substantially equivalent to remedy provided under Federal or State law.

G. This Chapter shall not create any special rights or privileges which would not be available to all of the City's inhabitants, because every person has a sexual orientation and a gender identity.

H. This Chapter shall be construed and applied in a manner consistent with First Amendment jurisprudence regarding the freedom of speech and exercise of religion.

5-11-2 DEFINITIONS.

A. Discriminate/Discrimination. Any direct or indirect exclusion, distinction, segregation, limitation, refusal, denial, or other differentiation in the treatment of a person because of a person's actual or perceived sexual orientation or gender identity/expression or because of a person's association with any such person. "Discrimination" shall not mean and shall not be interpreted to require or to grant or to accord any preferential treatment to any person because of that person's orientation or gender expression/identity.

B. Educational Institution. A public or private institution, including an academy; college; elementary or secondary school; extension course; kindergarten; nursery; school system; university; business; nursing; professional, secretarial, technical, or vocational school; or agent of such an educational institution.

C. Gender Identity/Expression. Actual or perceived gender-related characteristics, identity, appearance, expression or behavior of a person, regardless of such person's biological or assigned sex at birth.

D. Otherwise Qualified. Possessing the bona fide job-related qualifications required by an employer for particular job classification or position, such as education; training; ability; character; integrity; disposition to work; adherence to reasonable rules and regulations (including established dress codes, appropriate utilization of bathroom facilities, etc.); and other bona fide job-related qualifications required by an employer.

E. Sexual Orientation. Actual or perceived homosexuality, heterosexuality, and/or bisexuality.

5-11-3 PROHIBITED DISCRIMINATORY ACTS.

A. Unlawful Employment Practices.

1. Employer Practices. Where a person is otherwise qualified, it shall be an unlawful employment practice for an employer:

a. to fail or refuse to hire or to discharge any person, or otherwise to discriminate against any person with respect to compensation, terms, conditions, or privileges of employment, because of such person's sexual orientation or gender identity/expression; or,

b. to limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any person of employment opportunities or otherwise adversely affect status as an employee, because of such person's sexual orientation or identity/expression.

2. Employment Agency Practices. Where a person is otherwise qualified, it shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any person because of sexual orientation or gender identity/expression, or to classify or refer for employment any person on the basis of sexual orientation or gender identity/expression.

3. Labor Organization Practices. It shall be an unlawful employment practice for a labor organization:

a. to exclude or to expel from its membership or otherwise to discriminate against, any person because of sexual orientation or gender identity/expression;

b. to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any person otherwise qualified, in any way which would deprive or tend to deprive any person otherwise qualified of employment opportunities, or would limit such employment opportunities or otherwise adversely affect status as an employee or as an applicant for employment, because of such person's sexual orientation or gender identity/expression; or,

c. to cause or attempt to cause an employer to discriminate against a person in violation of this section.

4. Training Programs. It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any person, otherwise qualified because of sexual orientation or gender identity/expression in admission to, or employment in, any program established to provide apprenticeship or other training.

B. Unlawful Housing Practices. It shall be an unlawful housing practice:

1. to refuse to sell or rent, after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of sexual orientation or gender identity/expression;

2. to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of sexual orientation or gender identity/expression;

3. to make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on sexual orientation or gender identity/expression or an intention to make any such preference, limitation, or discrimination;

4. to represent to any person because of sexual orientation or gender identity/expression that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact available; or

5. for profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons' sexual orientation or gender identity/expression.

5-11-4 EXCEPTIONS.

A. This Chapter shall not apply to:

1. a religious corporation, association, educational institution, or society, trust or any entity or association which is a wholly owned or controlled subsidiary or agency of any religious corporation, association, society, trust, or corporation sole;

2. an expressive association whose employment of a person protected by this Chapter would significantly burden such association's rights of expressive association under *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000); and,

3. the United States Government, any of its departments, agencies, or any corporation(s) wholly owned by it; and the State of Idaho, any of its departments, agencies, bodies corporate and politic, and political subdivisions, or any corporation(s) wholly owned by them, except the City of Idaho Falls, Idaho.

B. This Chapter shall not apply to:

1. the sale or rental of a one family dwelling where the owner:

a. does not own an interest in or title to four (4) or more one family dwellings within the City;

b. has not sold two (2) or more one family dwellings within the twenty-four (24) month period immediately preceding such a sale or rental; and,

c. such one family dwelling(s) were sold or rented without engaging the services of any real estate broker, agent, salesperson, property manager, or other person engaged in the services of any real estate broker, agent, salesperson, or property manager or other person engaged in the business of selling or renting dwellings.

2. the rental of a unit in a one, two, three or four-family dwelling where the owner continues to reside in one unit of such a dwelling;

3. employment practices of an owner or tenant which occur within the dwelling where such owner or tenant is residing; and,

4. a person, business, or enterprise who hires fewer than five (5) employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year, whose services are to be partially or wholly performed in the State of Idaho.

5-11-5 PENALTIES.

A. First Offense. Any person found in violation of any of the provisions of this Chapter shall be guilty of an infraction for the first offense and shall be punished as provided in the Idaho Infraction Rules and in a fine amount set by Resolution of the Council from time to time. There shall be no right to trial by jury for an infraction.

B. Subsequent Offense(s). Any person found in violation of any of the provisions of this Chapter within five (5) years of any previous violation of any of the provisions of this Chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished pursuant to this Code.

C. A misdemeanor violation may be reduced to an infraction, payable by a fine as set by Resolution of the Council from time to time, if the defendant engages in corrective action, which may include, but is not limited to the following: sensitivity training for the defendant and/or the defendant's agreement to adopt and pursue a policy of non-discrimination in its practices; and/or the defendant's agreement to not engage in discriminatory practices in the future.

D. A complaint filed under the provisions of this Chapter shall be filed within one hundred eighty (180) days of the alleged discriminatory conduct made the basis of the complaint.

5-11-6 COERCION, INTIMIDATION, THREAT AND INTERFERENCE PROHIBITED.

It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of having exercised or enjoyed, or on account of having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this Chapter.

5-11-7 NO PRIVATE RIGHT OF ACTION OR MONEY DAMAGES.

There is no private right or cause of action created by this Chapter. No money damages are available to any person based on this Chapter.