ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF IDAHO FALLS, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO; PROVIDING FOR THE AMENDMENT OF IDAHO FALLS CITY CODE TITLE 5, BY THE ADDITION OF CHAPTER 33; TO PROHIBIT DISCRIMINATORY ACTS IN EMPLOYMENT AND HOUSING BASED UPON SEXUAL ORIENTATION AND/OR GENDER EXPRESSION/IDENTITY, AS DEFINED; AND PROVIDING SEVERABILITY, CODIFICATION, PUBLICATION BY SUMMARY, AND ESTABLISHING EFFECTIVE DATE.

WHEREAS, state and federal laws prohibit discrimination in the areas of employment and housing on the basis of race, color, age, sex, national origin, familial status, veteran's status, and/or disability, but there are no specific protections against discrimination on the basis of sexual orientation or gender expression/identity; and

WHEREAS, the Council believes that current State and Federal processes for the investigation and correction of discrimination on the basis of race, color, religious creed, ancestry, age, sex, national origin, familial status, veteran's status, and/or disability are sufficient such that the City should not interfere or alter such processes; and

WHEREAS, those within the community who feel that they are, or have been, discriminated against on the basis of race, color, religious creed, ancestry, age, sex, national origin, familial status, veteran's status, and/or disability should be encouraged to make their claim for such discrimination directly to the state and/or federal agency directly responsible for receiving and investigating those claims; and

WHEREAS, because there are no specific protections against discrimination in employment or housing on the basis of sexual orientation or gender expression/identity within City limits, the Mayor and Council wish to prohibit such discrimination through a duly adopted City Ordinance; and

WHEREAS, the Council wishes to grant common sense rights, including the right of people to have a roof over their heads and the right to work without being discriminated against, while balancing vital issues of religious and other freedoms with such rights; and

WHEREAS, the Council believes that the contents of this Ordinance are fair and reasonable, and allow all people to preserve human dignity and treat others with respect; and

WHEREAS, it is the policy and intent of the City that no person be denied equal protection under the law nor shall any person be discriminated against in employment or housing in the City because of sexual orientation or gender expression/identity; and

WHEREAS, nothing contained herein shall be construed as supporting and/or advocating any particular doctrine, position, point of view, or religious view; and

WHEREAS, it is the intention of this Ordinance that all persons are treated fairly and equally in the City of Idaho Falls, Idaho; and

WHEREAS, the new Chapter 33 of Title 5 shall be entitled "Non-Discrimination in Employment and Housing";

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF IDAHO FALLS, IDAHO, AS FOLLOWS:

SECTION 1: That Idaho Falls City Code Title 5 be amended by the addition of a new Chapter 33 Non-Discrimination in Employment and Housing, as follows:

CHAPTER 33
NON-DISCRIMINATION IN EMPLOYMENT AND HOUSING

SECTION:

5-33-1: Purpose and Declaration of Policy
5-33-2: Definitions
5-33-3: Prohibited Discriminatory Acts
5-33-4: Exceptions
5-33-5: Penalty
5-33-6: Coercion, Intimidation, Threat and Interference Prohibited
5-33-7: No Private Right of Action or Money Damages

Sec. 33-1. 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~~, and public accomodations~~.

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.~~, and that every person has the right to the full enjoyment of places open to the general public for resort, accommodation, assemblage, and/or amusement.~~ 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~~, or public accomodations~~ 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; therefor, 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 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.

Sec. 33-2. Definitions

~~A. *Deny.* Any act which, directly or indirectly, by any person or their agent or employee, results or is intended to or calculated to result in whole or in part in any discrimination, distinction, restriction, or unequal treatment or representation. It also includes, but is not limited to, requiring a person to pay a larger sum than the uniform rates charged other persons, or the refusing or withholding from persons admission, patronage, custom, presence, frequenting, dwelling, staying, or lodging in any place of public resort, accommodation, assemblage, or amusement except for conditions and limitations established by law and applicable alike to all persons, regardless of sexual orientation and/or gender expression/identity.~~

AB. *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 sexual orientation or gender expression/identity.

BC. *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.

~~D. *Full Enjoyment.* The right to use, rent or purchase real property; any service, commodity or article of personal property offered or sold by any person or establishment to the public; and the admission of any person to accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage or amusement; free from acts directly or indirectly causing persons of any particular sexual orientation and/or gender identity/expression to be treated as not welcome, accepted, desired or solicited.~~

CE. *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.

DF. *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.

~~G. *Place of Public Resort, Accommodation, Assemblage or Amusement.* Any public place, licensed or unlicensed, kept for gain, hire or reward, or where charges are made for admission, service, occupancy or use of any property or facilities, whether conducted for the entertainment, housing or lodging of transient guests, or for the benefit, use or accommodation of those seeking health, recreation or rest, or for the sale of goods and merchandise, or for the rendering of personal services, or for public conveyance or transportation on land, water or in the air, including the stations and terminals thereof and the garaging/storing of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates, or assembles for amusement, recreation or public purposes, or public halls, public elevators and public washrooms of buildings and structures occupied by two (2) or more tenants, or by the owner and one (1) or more tenants, or any public library or any educational institution wholly or partially supported by public funds, or schools of special instruction, or nursery schools, or day care facilities or children's camps. Nothing herein contained shall be construed to include, or apply to, any institute, bona fide club, or place of accommodation, which is by its nature distinctly private, provided that where public use is permitted, such use shall be covered by this definition. This definition excludes any educational facility operated or maintained by a bona fide religious or sectarian institution.~~

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

Sec. 33-3. 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 gender 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.

~~C. Use of Public Places. It shall be unlawful to deny to any person because of sexual orientation or gender identity/expression, the full enjoyment of any of the accomodations, advantages, facilities or privilages of any place of public resort, accomodation, assemblage, or amusement.~~

Sec. 33-4. 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, ~~or~~ agencies, or any corporation(s) wholly owned by it; ~~or~~ and the state of Idaho, ~~or~~ any of its departments, agencies, bodies corporate and politic, and ~~or~~ 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, 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 ~~five (5) or~~ 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.

Sec. 33-5. 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.

Sec. 33-6. 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.

Sec. 33-7. 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.

SECTION 2. Savings and Severability Clause. The provisions and parts of this Ordinance are intended to be severable. If any section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

SECTION 3. Codification Clause. The City Clerk is instructed to immediately forward this Ordinance to the codifier of the official municipal code for proper revision of the Code.

SECTION 4. Publication. This Ordinance, or a summary thereof in compliance with Idaho Code, shall be published once in the official newspaper of the City, and shall take effect immediately upon its passage, approval, and publication.

SECTION 5. Effective Date. This Ordinance shall be in full force and effect from and after its passage, approval and publication.

PASSED by the City Council and APPROVED by the Mayor of the City of Idaho Falls, Idaho, this _____ day of _____, 2013.

CITY OF IDAHO FALLS, IDAHO

_____
JARED D. FUHRIMAN, MAYOR

ATTEST:

_____
ROSEMARIE ANDERSON, CITY CLERK

(SEAL)

STATE OF IDAHO)
) ss:
County of Bonneville)

I, ROSEMARIE ANDERSON, CITY CLERK OF THE CITY OF IDAHO FALLS, IDAHO, DO HEREBY CERTIFY:

That the above and foregoing is a full, true and correct copy of the Ordinance entitled, "AN ORDINANCE OF THE CITY OF IDAHO FALLS, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO; PROVIDING FOR THE AMENDMENT OF IDAHO FALLS CITY CODE TITLE 5, BY THE ADDITION OF CHAPTER 33; TO PROHIBIT DISCRIMINATORY ACTS IN EMPLOYMENT AND HOUSING BASED UPON SEXUAL ORIENTATION AND/OR GENDER EXPRESSION/IDENTITY, AS DEFINED; AND PROVIDING SEVERABILITY, CODIFICATION, PUBLICATION BY SUMMARY, AND ESTABLISHING EFFECTIVE DATE."

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ROSEMARIE ANDERSON, CITY CLERK