

CHARTER TOWNSHIP OF UNION HUMAN RIGHTS

ORDINANCE NO. 2012-06

AN ORDINANCE TO AMEND THE CHARTER TOWNSHIP OF UNION CODE OF ORDINANCES BY ADDING A NEW ORDINANCE TITLED "HUMAN RIGHTS," TO PROHIBIT DISCRIMINATION IN EMPLOYMENT, HOUSING AND PUBLIC ACCOMMODATIONS AND TO PROVIDE PENALTIES FOR VIOLATIONS

IT IS HEREBY ORDAINED BY THE PEOPLE OF THE CHARTER TOWNSHIP OF UNION:

SECTION 1. Purpose.

(A) The Township intends that no individual be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his or her civil rights or be discriminated against because of race, religion, color, national origin, sex, age, marital status, physical or mental disability, height, weight, familial status, sexual orientation or gender identity.

(B) The prohibitions against discrimination in this ordinance are intended to supplement federal and state civil rights law prohibiting discrimination in the areas of employment, housing and public accommodations. However, this chapter shall be construed and applied in a manner consistent with jurisprudence regarding the freedom of speech and exercise of religion under the First Amendment to the United States Constitution.

(C) Nothing in this ordinance is intended to require or shall be construed to require preferential treatment of any individual or group identified in subSECTION (A).

SECTION 2. Definitions.

For the purpose of this chapter, the following definitions shall apply:

(A) AGE. Chronological age.

(B) AUTHORIZED TOWNSHIP OFFICIAL. Code enforcement personnel or any other personnel of the Township designated and authorized by the Township Manager, this code or any ordinance to investigate or issue municipal civil infraction citations or municipal civil infraction violation notices.

(C) COMPLAINANT. An individual or other person who files a complaint alleging a violation of this chapter.

(D) DISCRIMINATE, DISCRIMINATION. To make a decision, offer to make a decision or refrain from making a decision based in whole or in part on the race, religion, color, national origin, sex, age, marital status, physical or mental disability, height, weight, familial status, sexual orientation or gender identity of an individual. Sex discrimination includes sexual harassment and discrimination based on pregnancy, childbirth, or a medical condition related to pregnancy or childbirth that does not include non-therapeutic abortion not intended to save the life of the mother.

(E) EDUCATIONAL INSTITUTION. A public or private institution or a separate school or department thereof, including an academy, college, elementary or secondary school, extension course, kindergarten, nursery, local school system, or university, or a business, nursing, professional, secretarial, technical, or vocational school. For the purposes of

this definition, educational institution includes an agent of an educational institution.

- (F) EMPLOYEE. An individual who is hired for a wage, salary, fee, payment or other remuneration to perform work for an employer.
- (G) EMPLOYER. A person who has one or more employees, and includes an agent of that person.
- (H) EMPLOYMENT AGENCY. A person regularly undertaking, with or without compensation, to procure, refer, recruit, or place an employee for an employer or to procure, refer, recruit, or place for an employer or person the opportunity to work for an employer. For purposes of this definition, employment agency includes an agent of that person.
- (I) FAMILIAL STATUS. One or more individuals under the age of 18 residing with a parent or other person having custody or in the process of securing legal custody of the individual or individuals or residing with the designee of the parent or other person having or securing custody, with the written permission of the parent or other person. For the purposes of this definition, "parent" shall include an individual who is pregnant.
- (J) GENDER IDENTITY. An individual's appearance, expression, identity or behavior as being either male or female, whether or not that appearance, expression, identity or behavior is different from that which is traditionally associated with the individual's designated gender at birth.
- (K) HOUSING ACCOMMODATION. Any improved or unimproved real property, or a part thereof, which is used or occupied, or is intended, arranged, or designed to be used or occupied, as a home or residence of one or more individuals.
- (L) IMMEDIATE FAMILY. A spouse, parent, child or sibling. INDIVIDUAL. A single human being.
- (M) LABOR ORGANIZATION. An organization of any kind, an agency or employee representation committee, group, association, or plan in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment. For purposes of this definition, a labor organization need not be subordinate to or affiliated with a national or international labor organization.
- (N) MARITAL STATUS. The state of being married, unmarried, divorced or widowed.
- (O) PERSON. An individual, agent, association, corporation, labor organization, legal representative, partnership, receiver, trust or any other legal or commercial entity.
- (P) PHYSICAL OR MENTAL DISABILITY. A determinable physical or mental characteristic of an individual, which may result from disease, injury, congenital condition of birth, or functional disorder, if the characteristic substantially limits a major life activity of that individual and is unrelated to the individual's ability to perform the duties of a particular job or position, is unrelated to the individual's ability to utilize and benefit from a place of public accommodation, or is unrelated to the individual's ability to acquire, rent, or maintain property. For the purposes of this definition, physical or mental disability does not include any condition caused by the current illegal use of a controlled substance or the use of intoxicating liquors by an individual.

- (Q) PLACE OF PUBLIC ACCOMMODATION. A business, or an educational, refreshment, entertainment, recreation, health, or transportation facility, or institution of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the public.
- (R) PRIVATE CLUB. An establishment that is not open to the public. A private club is one whose members' association with each other and the club is sufficiently intimate, small and exclusive that it is not open to the public.
- (S) RELIGIOUS ORGANIZATION OR INSTITUTION. A religious corporation, association, educational institution or society, which is, in whole or substantial part, owned, supported, controlled or managed by a particular religion whose purpose or character is directed toward the propagation of that particular religion and that has the inculcation of religious values or the provision of charity as its purpose; primarily employs persons who share its religious tenets; and primarily serves persons who share its religious tenets or, on a charitable basis, the broader community. Religious organization or institution includes, for illustration and not limitation: churches, mosques, synagogues and other houses of worship; any subsidiary organizations; educational institutions affiliated with, controlled, or managed by those houses of worship or with articles of incorporation, bylaws and other documents stating an intention to inculcate its religious tenets in students; and, faith-based organizations that, due to a sense of duty based on particular religious tenets, provide charitable services to the public.
- (T) RESPONDENT. A person against whom a complaint is filed under this chapter.
- (U) SEX. The actual biological state of being male or female as of birth, or subsequent alteration through surgical procedure, and without regard to any outward physical display or expression of gender identity.
- (V) SEXUAL HARASSMENT. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communication of a sexual nature under the following conditions:
- (1) Submission to the conduct or communication is made a term or condition, either explicitly or implicitly, to obtain employment, housing, or public accommodations.
  - (2) Submission to or rejection of the conduct or communication by an individual is used as a factor in decisions affecting the individual's employment, housing, or public accommodations.
  - (3) The conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations or public services, or housing, or creating an intimidating, hostile, or offensive employment, housing, or public accommodations.
- (W) SEXUAL ORIENTATION. Male or female homosexuality, heterosexuality or bisexuality, whether by orientation or practice. Sexual orientation does not include any sexual activity or attempted activity otherwise prohibited by law.
- (X) TOWNSHIP MANAGER. The Township Manager of the Township, or his or her designee.

SECTION 3. EmploymentPractices. Except as otherwise provided in SECTION 170.07:

- (A) An employer shall not discriminate against an individual with respect to recruitment, employment, compensation, work classifications, promotion or demotion, termination, or a term, condition or privilege of employment.
- (B) A labor organization shall not exclude or expel from membership a member or applicant for membership, or otherwise discriminate against a member or applicant for membership with respect to collective bargaining, member grievances, labor disputes, wages, rates of pay, hours or other terms or conditions of employment.
- (C) An employment agency shall not discriminate in the procurement, referral, recruitment, or placement of an individual for employment with an employer.

SECTION 4. Housing Practices.

Except as otherwise provided in SECTION 7:

- (A) A person shall not discriminate in leasing, selling, or otherwise making available any housing accommodation.
- (B) A person shall not discriminate in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection with any housing accommodation.
- (C) A person shall not discriminate in providing financing for the purchase, repair, or remodeling of any housing accommodations.
- (D) A person shall not discriminate in making referrals, listings or otherwise providing information regarding housing accommodations.

SECTION 5. PublicAccommodations.

Except as otherwise provided in SECTION 7, a person shall not discriminate in making available full and equal enjoyment of the goods, services, privileges, advantages, or accommodations of any place of public accommodation.

SECTION 6. General Prohibited Practices.

Except as otherwise provided in SECTION 7:

- (A) A person shall not adopt, enforce, or employ any policy or requirement, or print, post, circulate, mail or otherwise publish any statement, advertisement, sign, or notice which discriminates or suggests discrimination in providing employment, housing or public accommodations.
- (B) A person shall not coerce, threaten or retaliate against another for making a complaint or assisting in any investigation regarding a violation or alleged violation of this chapter. A person shall not require, request, conspire with, coerce or otherwise assist a person to retaliate against a person for making a complaint or assisting in an investigation.

- (C) A person shall not conspire with, assist, coerce, or request another to discriminate in any manner prohibited by this chapter.
- (D) A person shall not adopt, enforce, or employ any policy, practice or requirement which has the effect of discriminating in a manner prohibited by this chapter, except when there is a *bona fide* business necessity for such a policy, practice or requirement. For the purposes of this chapter, *bona fide* business necessity means that the policy, practice or requirement is reasonably necessary to the normal operation of the person's business. A *bona fide* business necessity does not arise due to a mere inconvenience or because of suspected or actual objection by neighbors, customers, or other persons.

SECTION 7. Exceptions.

Any other provision of this chapter notwithstanding:

- (A) The provisions of this chapter do not apply to any religious organization or institution with respect to its employment of individuals.
- (B) A religious organization or institution may restrict the occupancy of any of its housing facilities or place of public accommodations operated as a part of its religious activities to persons of its denomination or those who conform to the moral tenets of that religious organization or institution. This exception shall apply to a religious organization or institution that allows persons other than its members to use its facilities if its facilities remain exempt from Michigan property taxation pursuant to SECTION 7s of 1893 PA 206, as amended, MCL 211.7s.
- (C) The owner of a housing facility or accommodation devoted entirely to the housing of individuals of one gender may restrict the occupancy of such a facility or accommodation on the basis of gender.
- (D) The provisions of this chapter do not apply to the rental of a housing accommodation in a building that contains housing accommodations for not more than two (2) families living independently of each other if the owner or a member of the owner's immediate family resides in one (1) of the housing accommodations, or to the rental of a room or rooms in a single family dwelling by a person if the lessor or a member of the lessor's immediate family resides in the dwelling.
- (E) The provisions of this chapter do not apply to any arrangement for shared ownership, lease or residency of a dwelling unit.
- (F) An educational institution may limit the use of its facilities to those affiliated with such institution.
- (G) A governmental institution may restrict any of its facilities or restrict employment opportunities based on duly-adopted institutional policies that conform to state and federal laws and regulations.
- (H) A person may discriminate based on an individual's age when such discrimination is required or permitted by local, state or federal law.

- (I) A person may provide discounts on products or services to students, or on the basis of age.
- (J) A person may refuse to enter into a contractual relationship with an unemancipated minor.
- (K) A person may restrict the use of restrooms, lavatories, locker room facilities, shower facilities, or changing rooms on the basis of gender. Restrictions for the use of restrooms, lavatories, locker room facilities, shower facilities, or changing rooms as provided in this SECTION shall not be considered a violation of this chapter's prohibitions on discrimination based on gender identity.
- (L) A person may restrict participation in an instructional program, athletic event or on an athletic team on the basis of age, height, weight or gender.
- (M) A person may restrict membership in a private club that is not open to the public.
- (N) An employer may restrict employment opportunities to members of one's family.
- (O) An employer offering health or pension plans may provide for marital or familial status limitations in such plans provided those limitations conform to state and federal laws, rules and regulations. Further, nothing in this ordinance shall be construed or interpreted to neither require, nor prohibit, a private employer from offering employment benefits to the same-sex partner of an employee.
- (P) This chapter shall not prohibit the Township from allowing use of its facilities or services by persons that may be affiliated with, or otherwise supported by a religious organization or institution, which may espouse policies or practices inconsistent with the general intent of this chapter. Further, this chapter shall not prohibit the Township from allowing use of its facilities or services by persons not generally affiliated with or supported by a particular religious organization or institution, but who may espouse policies or practices inconsistent with the general intent of this chapter.
- (Q) This chapter shall not be construed to prohibit a township employee from exercising his or her First Amendment rights to donate to a charitable organization of his or her choosing through the use of the Township's automatic payroll deduction program. This chapter shall not be construed to limit the availability of the Township's automatic payroll deduction program only to charitable organizations that support or conform to the general intent and purposes of this chapter. Except as otherwise provided by law, the Township retains the discretion to determine whether or not to participate in or allow any payroll deduction.
- (R) This chapter is not intended to and shall not be construed to require an educational institution to, and an educational institution shall not use this ordinance as a justification to, suspend, expel or otherwise discipline a student enrolled in a medical, pharmaceutical, nursing, counseling, social work, or psychology program because the student refuses to counsel or serve a client or patient in a manner that conflicts with a sincerely held religious belief of the student. However, this provision is not intended

to alter or affect any professional ethics or academic standards or codes of conduct.

- (S) This chapter is not intended to and shall not be construed to require an employer to, and an employer shall not use this ordinance as a justification to, take any employment, promotion, compensation, benefits, termination or extension of employment action against, or alter the employment privileges of a professional employee, because that professional employee refuses to provide medical, social work, psychological or other professional counseling services when that counseling would reasonably conflict with that employee's sincerely held religious beliefs. However, this provision is not intended to alter or affect any professional ethics standards or codes of conduct.

SECTION 8. Investigation and Enforcement Procedure.

- (A) Any person claiming to be discriminated against in a manner prohibited by this chapter, and not otherwise prohibited by state or federal law, may, within 180 days of the alleged violation, file a signed, written complaint with the Township Manager, specifying, in detail, the names, dates, known witnesses and other pertinent facts relevant to the alleged violation. For any complaint alleging a violation of state or federal law, the Township Manager shall refer the complainant to the appropriate state or federal agency responsible for investigation and enforcement of such alleged violations.
- (B) After receiving a complaint, the Township Manager shall review the complaint and may, in his or her reasonable discretion, do any of the following:
  - (1) Undertake, or refer to Township staff or the Township attorney to undertake an investigation of the alleged violation.
  - (2) Refer the matter to an authorized Township official or the Township attorney to issue a municipal civil infraction citation and prosecute the violation as a municipal civil infraction.
  - (3) Refer the matter to the Isabella County Trial Court Alternative Program for Dispute Resolution, or other organization for conciliation or facilitative mediation services. A complainant or respondent failing to appear for a scheduled conciliation or mediation shall pay any costs resulting from such failure to appear. If a conciliation or mediation agreement is entered into under this SECTION, the parties shall be bound to its terms. A breach of such an agreement by the respondent shall be considered a violation of this chapter.
  - (4) Notify the complainant that no Township action will be taken related to the complaint. Such a determination shall not be evidence of non-violation should the complainant choose to initiate a private civil action against the alleged violator as provided in this SECTION.
- (C) Nothing in this SECTION shall be construed to limit a person's right to initiate a private civil action for an alleged violation as provided in SECTION 170.09 of this chapter.

SECTION 9. Private Cause of Action for Damages or Injunctive Relief.

A person alleging a violation of this chapter may bring a civil action within 180 days of the alleged violation, or 180 days after the end of an action taken by the Township under SECTION 8, whichever is later, for appropriate injunctive relief or damages, or both, in a court of competent jurisdiction.

SECTION 10. Remedies.

- (A) If a violation of this chapter is prosecuted as a municipal civil infraction under the Township Code §36.01 *et seq.*, fines of up to \$2,500 may be assessed. In addition to the penalties provided in this SECTION, a court shall have equitable jurisdiction to enforce any judgment, writ, or order necessary to enforce any provision of this ordinance, including, but not limited to, abatement of the violating condition or the granting of injunctive relief.
- (B) A court rendering judgment in a private civil action brought pursuant to SECTION 9 of this chapter may order any remedy authorized by Article 8 of the Elliott-Larsen Civil Rights Act, 1976 PA 453, as amended, MCL 37.2101 *et seq.*
- (C) Each day upon which a violation occurs shall constitute a separate and new violation.

SECTION 11. Violators Operating Under License Issued by Township.

The Township Manager may suspend the license of any person operating under a license issued by the Township, or any agency thereof, found to be in violation of this chapter and provide opportunity for a hearing conducted in accordance with the provisions of the Township Code under which that person is licensed to determine whether such license should be revoked. The provisions of this SECTION are not applicable to violations which are remedied through either conciliation or mediation services. However, a violation of a conciliation or mediation agreement shall be grounds for the revocation of a license as provided under this SECTION.

SECTION 12. Severability.

If any Section, Subsection, sentence, clause, phrase or portion of this chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this chapter.

SECTION 13. Publication and EffectiveDate.

The Township Clerk shall cause to be published a notice of adoption of this ordinance within 10 days of the date of its adoption. This ordinance shall take effect 30 days after its adoption.

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John Barker, Township Supervisor

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Peter Gailinat, Township Clerk