

ORDINANCE NO. 16-07

An Ordinance of the City Council of the City of Whitefish, Montana, adding a new chapter to Title 1, Administration, of the Whitefish City Code, to establish a civil rights policy prohibiting discrimination on the basis of actual or perceived sexual orientation or gender identity or expression, creating a cause of action in the Whitefish Municipal Court, authorizing the Municipal Court to fashion civil remedies, creating a time limit under which a claim may be filed, and establishing an effective date.

WHEREAS, at the November 17, 2014 City Council meeting many members of the Whitefish community addressed the Council with their concerns about an area resident and institute establishing their headquarters in Whitefish, Montana, the institute having been identified by the Southern Poverty Law Center in 2006 as one of the four leaders of the world of "academic racism"; and

WHEREAS, the area residents requested the City Council to take a stance against the ideology of racism, bigotry and prejudice espoused by white supremacy groups and efforts to change the community values that welcomes diversity and inclusion for all inhabitants and visitors; and

WHEREAS, the City is committed to recognize the dignity of all of its inhabitants and visitors, to celebrate all diversity, and to protect and safeguard the right and opportunity of all persons to exercise their civil rights and to be free from discrimination; and

WHEREAS, the First Amendment to the United States Constitution guarantees the rights of freedom of speech and peaceable assembly, recognizing that the right of free speech is not absolute, and the Fourteenth Amendment guarantees to its citizens the privileges and protections of due process and equal protection of the laws; and

WHEREAS, Article II, Declaration of Rights, of the Montana Constitution states that "[t]he dignity of the human being is inviolable" and guarantees the rights of freedom of speech and expression, peaceable assembly, due process and equal protection of the laws, and the freedom not to be discriminated against in the exercise of civil and political rights, on account of race, color, sex, culture, social origin or condition, or political or religious ideas; and

WHEREAS, § 49-1-201, MCA, states every person within the jurisdiction of this state is entitled to its protection; and

WHEREAS, in § 49-1-102, MCA, Montana state law declares and recognizes as a civil right, the right to be free from discrimination because of race, creed, religion, color, sex, physical or mental disability, age, or national origin, which includes the right to obtain and hold employment without discrimination, the right to the full enjoyment of any accommodation facilities or privileges of any place of public resort, accommodation, assemblage or amusement; and

WHEREAS, state and federal laws prohibit the denial of civil rights or discrimination on the basis of protected categories such as race, color, national origin, ancestry, religion, creed, sex, pregnancy, marital status, familial status (solely for housing), and physical or mental disability,

but no state or federal law protects the civil rights and right to be free from discrimination based upon a person's sexual orientation or gender identity and/or expression; and

WHEREAS, it is the intent of the City of Whitefish that every person within the City's jurisdiction shall be entitled to the protection of each person's civil rights and the right not to be discriminated against on the basis of age, race, color, national origin, ancestry, religion, creed, sex, pregnancy, marital status, familial status (solely for housing), physical or mental disability, and sexual orientation or gender identity and/or expression; and

WHEREAS, Article 1, Section 1.01 of the City of Whitefish Charter states the City shall have all powers not prohibited by the Constitution of Montana or the laws of Montana and that its powers and authority shall be liberally construed; and

WHEREAS, the City's powers include, but are not limited to, its police power which is its fundamental authority to enact laws to protect the health, safety, and general welfare of its citizens; and

WHEREAS, § 7-1-106, MCA, provides the City's power and authority are to be liberally construed, with every reasonable doubt as to the existence of the City's power or authority resolved in favor of the power or authority's existence; and

WHEREAS, the City finds that discrimination in the areas of employment, public accommodations and housing is a serious threat to the health, safety, and general welfare of the community. Discrimination is a violation of basic civil rights that creates strife and unrest and deprives the City of its full capacity for economic development; and

WHEREAS, discrimination in housing makes it difficult for persons addressed in this Ordinance to find housing in close proximity to urban services, educational facilities, in price ranges that are within their earning ability, and may cause citizens to seek housing outside of the City; and

WHEREAS, discrimination in places of public accommodation is economically harmful to a prosperous community and is otherwise detrimental to the welfare and economic growth of the City and may cause citizens to seek public accommodations outside of the City; and

WHEREAS, at a lawfully noticed public hearing on March 21, 2016, the Whitefish City Council received an oral report and a written report from staff, invited public input, and approved adding a new chapter creating the City's civil rights policy prohibiting discrimination to Title 1, Administration, of the Whitefish City Code, as provided in Section 1 below; and

WHEREAS, nothing in this Ordinance is intended 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, assembly, and exercise of religion; and

WHEREAS, it is in the best interests of the City of Whitefish, and its inhabitants, to adopt local regulations adapted to the needs of all of its citizens.

NOW, THEREFORE, be it ordained by the City Council of the City of Whitefish, Montana, as follows:

Section 1: A new chapter is hereby added to Title 1 of the Whitefish City Code to provide as follows:

1-10-1: POLICY, PURPOSE AND INTENT:

- A. It is declared to be the policy of the City, in the exercise of its police powers pursuant to its City Charter and self-governing authority for the protection of the public health, safety, and general welfare, and for the maintenance of peace and good government, to assure civil rights and opportunity to all persons, free from restrictions and discrimination because of his or her actual or perceived race, color, national origin, ancestry, religion, creed, sex, age, marital or familial status, physical or mental disability, sexual orientation, or gender identity and/or expression.
- B. In addition to the right to be free from discrimination on the basis of race, color, national origin, ancestry, religion, creed, sex, age, marital or familial status, physical or mental disability, the right to be free from discrimination on the basis of actual or perceived sexual orientation or gender identity or expression is hereby recognized as and hereby declared to be a civil right. Adding such discrimination prohibitions on the basis of actual or perceived sexual orientation and/or gender identity or expression to the City's laws is necessary and desirable because existing state and federal laws regarding discrimination do not adequately address all potential discriminatory practices that may impact the City's diverse inhabitants and visitors.
- C. The provisions of this chapter shall be liberally construed for accomplishment of its policies and purposes; provided that, however, nothing in this chapter is intended 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, freedom of association, and exercise of religion or to infringe upon or alter the authority vested by law in the Montana Human Rights Commission, the federal Equal Employment Opportunity Commission, or any other federal or state agency having jurisdiction over civil rights and discriminatory practices.
- D. Pursuant to § 7-1-111(3), MCA, the provisions of the chapter do not apply to or affect the public school system.
- E. The recognition of religious liberty and the rights of freedom of association and expression is necessary to balance the civil rights of all residents of the city; as such, provisions with this chapter related to fraternal, charitable, and religious organizations are intended to ensure a balanced approach to protecting civil rights of all citizens of the city so that the protections afforded by this chapter do not unreasonably impede upon a fraternal,

charitable, or religious organization's ability to engage in activities protected by law or to disseminate its preferred views.

1-10-2: DEFINITIONS:

As used in this chapter, 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 and/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 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 ACCOMMODATION: 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, 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, aesthetics, or manicuring salon or shop, bathroom, rest house, theater, swimming pool, skating rink, golf course, ball field, 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 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 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.

1-10-3: 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.

1-10-4: DISCRIMINATION IN PUBLIC ACCOMMODATIONS 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.

1-10-5: 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 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.

1-10-6: RETALIATION PROHIBITED:

No person shall coerce, threaten, discharge, expel, blacklist, or otherwise retaliate against another person for opposing any practices prohibited by this chapter, making a complaint, or assisting in an investigation or proceeding regarding an alleged violation of this chapter; 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.

1-10-7: VIOLATION; CIVIL REMEDY:

- A. Any unlawful discrimination specifically addressed by the Montana Human Rights Act shall be submitted to the Montana Department of Labor and Industry pursuant to Title 49, Chapter 2, MCA.
- B. Violations of sections not specifically addressed by Montana State law are to be civil municipal ordinance violations within the exclusive jurisdiction of the Whitefish Municipal Court pursuant to § 3-6-103, MCA. The Montana Rules of Civil Procedure shall apply, except and unless the Municipal Court establishes alternative rules of civil procedure for matters within the exclusive jurisdiction of the Municipal Court.
- C. Any person claiming a violation of this chapter may seek civil remedies, injunctive relief, attorney fees or other equitable relief by petitioning the Whitefish Municipal Court. Prior to the filing of any petition in Whitefish Municipal Court under this chapter, a person must have:
 - 1. 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
 - 2. Received a disposition of the complaint from the Montana Human Rights Bureau, the Montana Department of Labor and Industry Hearings Bureau, the Montana Human Rights Commission, the Equal Opportunity 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 or applicable federal law.

For purposes of this section, 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 Whitefish Municipal Court within ninety (90) days of receipt of the written disposition referenced in 1-10-7(C)(2).

1-10-8: SEVERABILITY:

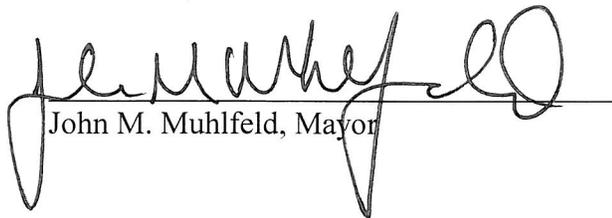
If any section, subsection, sentence, clause, phrase, or word in this chapter is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter. The City Council hereby declares that it would have passed this chapter and each 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 chapter should be declared invalid or unconstitutional, then the remaining ordinance provisions will remain in full force and effect.

Section 2: This Ordinance does not affect the rights and duties that matured, penalties that were incurred or proceedings that were begun before the effective date of this Ordinance. All other provisions of the Whitefish City Code shall remain in full force and effect.

Section 3: In the event any word, phrase, clause, sentence, paragraph, section or other part of the Ordinance set forth herein is held invalid by a court of competent jurisdiction, such judgment shall affect only that part held invalid, and the remaining provisions thereof shall continue in full force and effect.

Section 4: This Ordinance shall take effect thirty (30) days after its adoption by the City Council of the City of Whitefish, Montana, and signing by the Mayor thereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, ON THIS 5TH DAY OF APRIL, 2016.


John M. Muhlfeld, Mayor

ATTEST:


Michelle Howke, City Clerk