

11/5/2015

ORDINANCE NO. 29942

An ordinance amending Chapter 46, "Unlawful Discriminatory Practices Relating to Sexual Orientation," of the Dallas City Code by amending the title of the Chapter and amending Sections 46-1, 46-4, 46-6 ("Unlawful Employment Practices"), 46-6 ("Unlawful Public Accommodation Practices"), 46-7, and 46-10; declaring that the city encourages all entities within the city, even those entities that are excepted from the requirements of this Chapter, to recognize the rights of all individuals; clarifying the distinction between sexual orientation and gender identity and expression so that the definitions of those terms align with the definitions in Chapter 34, "Personnel Rules," of the Dallas City Code; providing that a person's gender is determined by the person's own perception of their gender; removing an exception that allowed discrimination in certain housing facilities; establishing a deadline for the administrator to notify a complainant after determining that the person's complaint does not come within the scope of Chapter 46; making technical and conforming changes; providing a penalty not to exceed \$500; providing a saving clause; providing a severability clause; and providing an effective date.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That the title of Chapter 46, "Unlawful Discriminatory Practices Relating to Sexual Orientation," of the Dallas City Code, as amended, is amended to read as follows:

"CHAPTER 46

**UNLAWFUL DISCRIMINATORY PRACTICES RELATING TO SEXUAL
ORIENTATION AND GENDER IDENTITY AND EXPRESSION"**

SECTION 2. That Section 46-1, "Declaration of Policy," of Article I, "General," of Chapter 46, "Unlawful Discriminatory Practices Relating to Sexual Orientation and Gender Identity and Expression," of the Dallas City Code, as amended, is amended to read as follows:

“SEC. 46-1. DECLARATION OF POLICY.

(a) It is the policy of the city of Dallas to bring about through fair, orderly, and lawful procedures the opportunity for every person to obtain employment, access to all places of public accommodation, and housing, without regard to sexual orientation or gender identity and expression. The city of Dallas is proud of the diversity of its employees, as reflected in Section 34-35 of this Code, and is proud of the diversity of its citizens. The city strongly encourages all entities within the city, including those who are excepted from the requirements of this chapter, to recognize ~~[This policy is based upon recognition of]~~ the rights of every individual to work and earn wages through gainful employment, to obtain and enjoy goods, services, facilities, privileges, advantages, and accommodations in all places of public accommodation, and to obtain housing.

(b) The denial or deprivation of these rights because of a person’s actual or perceived sexual orientation or gender identity and expression is detrimental to the health, safety, and welfare of the citizens of Dallas and is within the power and responsibility of the city to prevent.”

SECTION 3. That Section 46-4, “Definitions,” of Article I, “General,” of Chapter 46, “Unlawful Discriminatory Practices Relating to Sexual Orientation and Gender Identity and Expression,” of the Dallas City Code, as amended, is amended to read as follows:

“SEC. 46-4. DEFINITIONS.

(a) In this chapter:

(1) ADMINISTRATOR means the person designated by the city manager to receive, investigate, and conciliate complaints under this chapter and includes the administrator’s designated representatives.

(2) CITY means the city of Dallas, Texas.

(3) COMPLAINANT means a person, including the administrator, who files a complaint under this chapter.

(4) CONCILIATION means the attempted resolution of issues raised in a complaint filed under this chapter, or raised in the investigation of the complaint, through informal negotiations involving the complainant, the respondent, and the administrator.

(5) CONCILIATION AGREEMENT means a written agreement setting forth the resolution of the issues in a conciliation.

(6) DISCRIMINATION means any direct or indirect exclusion, distinction, segregation, limitation, refusal, denial, or other differentiation in the treatment of a person or persons because of sexual orientation or gender identity and expression.

(7) DWELLING means:

(A) any building, structure, or part of a building or structure that is occupied as, or designed and intended for occupancy as, a residence for one or more persons; and

(B) any vacant land that is offered for sale or lease for the construction or location of any building, structure, or part of a building or structure designed and intended for occupancy as a residence for one or more persons.

(8) EMPLOYEE means any individual employed by an employer. The term does not include an elected official.

(9) EMPLOYER means any person who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and includes any agent of such a person. The term does not include a bona fide private membership club (other than a labor organization) that is exempt from taxation under Section 501(c) of the Internal Revenue Code of 1954, as amended.

(10) EMPLOYMENT AGENCY means any person, and any agent of a person, who regularly undertakes, with or without compensation, to procure:

(A) employees for an employer; or

(B) opportunities for a person to work for an employer.

(11) GENDER IDENTITY AND EXPRESSION means “gender identity and expression” as defined in Chapter 34 of the Dallas City Code.

(12) LABOR ORGANIZATION means a labor organization and any of its agents, and includes:

(A) any organization, agency, or employee representation committee, group, association, or plan in which employees participate and that 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; and

(B) any conference, general committee, joint or system board, or joint council so engaged that is subordinate to a national or international labor organization.

(13[12]) PERSON means one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint

stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, fiduciaries, and other legal entities.

(14[13]) PLACE OF PUBLIC ACCOMMODATION means any of the following establishments if they are open to the general public and, for compensation, offer any product, service, or facility to the general public:

(A) Any inn, hotel, motel, or other establishment that provides lodging to transient guests, other than an establishment:

(i) located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of the establishment as a residence; or

(ii) in which the majority of the occupants are permanent residents and maintain their fixed place of domicile in the establishment.

(B) Any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of a retail establishment or gasoline station.

(C) Any motion picture house, theater, concert hall, sports arena, stadium, or other place of exhibition or entertainment.

(D) Any bar, tavern, pub, drinking establishment, or facility where alcoholic beverages are served.

(E) Any retail or wholesale establishment selling any kind of goods or services.

(F) Any public conveyance, including stations and terminals.

(15[14]) RELIGION means all aspects of religious observance and practice, as well as belief.

(16[15]) RELIGIOUS ORGANIZATION means:

(A) a religious corporation, association, or society; or

(B) a school, college, university, or other educational institution or institution of learning, if:

(i) the institution is, in whole or in substantial part, controlled, managed, owned, or supported by a religion, religious corporation, association, or society; or

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(ii) the curriculum of the institution is directed toward the propagation of a religion.

(17[16]) RENT means to lease, sublease, let, or otherwise grant for a consideration the right to occupy premises not owned by the occupant.

(18[17]) RESPONDENT means a person identified in a complaint as having committed an unlawful practice under this chapter.

(19[18]) SEXUAL ORIENTATION means “sexual orientation” as defined in Chapter 34 of the Dallas City Code ~~{an individual’s real or perceived orientation as heterosexual, homosexual, or bisexual or an individual’s real or perceived gender identity}~~.

(20[19]) UNLAWFUL PRACTICE means a discriminatory act or practice relating to employment, public accommodations, or housing that is prohibited under this chapter.

(b) For purposes of this chapter, an individual’s gender is determined solely by that individual’s own perception of their gender.”

SECTION 4. That Section 46-6, “Unlawful Employment Practices,” of Article II, “Unlawful Discriminatory Practices,” of Chapter 46, “Unlawful Discriminatory Practices Relating to Sexual Orientation and Gender Identity and Expression,” of the Dallas City Code, as amended, is amended to read as follows:

“SEC. 46-6. UNLAWFUL EMPLOYMENT PRACTICES.

(a) Employers. It is unlawful for an employer, because of sexual orientation or gender identity and expression:

- (1) to fail or refuse to hire, or to discharge, any person;
- (2) to discriminate against any person with respect to compensation, terms, conditions, or privileges of employment; or
- (3) to limit, segregate, or classify employees or applicants for employment in any way that would deprive or tend to deprive a person of employment or employment opportunities, or that would otherwise adversely affect a person’s status as an employee.

(b) Employment agencies. It is unlawful for an employment agency:

- (1) to fail or refuse to refer for employment, or to otherwise discriminate against, any person because of sexual orientation or gender identity and expression; or

(2) to classify or refer for employment any person on the basis of sexual orientation or gender identity and expression.

(c) Labor organizations. It is unlawful for a labor organization:

(1) to exclude or expel from its membership, or to otherwise discriminate against, any person because of sexual orientation or gender identity and expression;

(2) to fail or refuse to refer for employment any person because of sexual orientation or gender identity and expression;

(3) to limit, segregate, or classify its members or applicants for membership in any way that would deprive or tend to deprive a person of employment or employment opportunities, or that would otherwise adversely affect a person's status as an employee or as an applicant for employment; or

(4) to cause or attempt to cause an employer to discriminate against a person in violation of this chapter.

(d) Training programs. It is unlawful for an employer, a labor organization, or a joint labor-management committee controlling apprenticeship or other training or retraining (including on-the-job training programs) to discriminate against any person because of sexual orientation or gender identity and expression in the admission to, or employment in, any program established to provide apprenticeship or other training.

(e) Notices and advertisements.

(1) It is unlawful for an employer to print or publish, or cause to be printed or published, any notice or advertisement relating to employment by the employer that indicates any preference, limitation, specification, or discrimination based on sexual orientation or gender identity and expression.

(2) It is unlawful for an employment agency to print or publish, or cause to be printed or published, any notice or advertisement relating to membership in or any classification or referral for employment by the employment agency that indicates any preference, limitation, specification, or discrimination based on sexual orientation or gender identity and expression.

(3) It is unlawful for a joint labor-management committee controlling apprenticeship or other training or retraining (including on-the-job training programs) to print or publish, or cause to be printed or published, any notice or advertisement relating to admission to, or employment in, any program established to provide apprenticeship or other training by the joint labor-management committee that indicates any preference, limitation, specification, or discrimination based on sexual orientation or gender identity and expression.

(4) Nothing in this subsection prohibits a notice or advertisement from indicating a preference, limitation, specification, or discrimination based on sexual orientation or

gender identity and expression when sexual orientation or gender identity and expression is a bona fide occupational qualification for employment.

(f) Exception. This section does not apply to, and does not require, the provision of employee benefits to a person for the benefit of the person's domestic partner."

SECTION 5. That Section 46-6, "Unlawful Public Accommodation Practices," of Article II, "Unlawful Discriminatory Practices," of Chapter 46, "Unlawful Discriminatory Practices Relating to Sexual Orientation and Gender Identity and Expression," of the Dallas City Code, as amended, is renumbered and amended to read as follows:

"SEC. 46-6.1. UNLAWFUL PUBLIC ACCOMMODATION PRACTICES.

(a) Discrimination in public accommodations. It is unlawful for any owner, proprietor, or lessee of any place of public accommodation, because of sexual orientation or gender identity and expression:

(1) to directly or indirectly exclude, segregate, limit, refuse, or deny to any person any of the accommodations, advantages, facilities, benefits, privileges, services, or goods offered to the general public at that place; or

(2) to circulate, issue, display, post, mail, or otherwise publish a statement, advertisement, or sign indicating that:

(A) a person will be denied accommodations, advantages, facilities, benefits, privileges, services, or goods at that place; or

(B) the patronage or presence of a person at that place is objectionable, unwelcome, unacceptable, undesirable, or unsolicited.

(b) Defenses. It is a defense to prosecution under this section that the refusal to admit a person to a place of public accommodation or the expulsion of a person from a place of public accommodation was required by law.

(c) Exceptions. This section does not apply to:

(1) a hotel, restaurant, bar, lounge, nightclub, cabaret, theater, bowling alley, skating rink, or golf course when the accommodations, advantages, facilities, and services are restricted to members of a club and their guests; or

(2) any bona fide social, fraternal, educational, civic, political, or religious organization, when the profits of the accommodations, advantages, facilities, and services (above reasonable and necessary expenses) are solely for the benefit of the organization."

SECTION 6. That Section 46-7, “Unlawful Housing Practices,” of Article II, “Unlawful Discriminatory Practices,” of Chapter 46, “Unlawful Discriminatory Practices Relating to Sexual Orientation and Gender Identity and Expression,” of the Dallas City Code, as amended, is amended to read as follows:

“SEC. 46-7. UNLAWFUL HOUSING PRACTICES.

(a) Discrimination in the sale or rental of housing.

(1) It is unlawful for a person, because of sexual orientation or gender identity and expression:

(A) to refuse to negotiate with a person for the sale or rental of a dwelling or to otherwise deny or make unavailable a dwelling to a person;

(B) to refuse to sell or rent a dwelling to a person who has made a bona fide offer for the dwelling;

(C) to discriminate against a person in the terms, conditions, or privileges of the sale or rental of a dwelling or in the provision of services or facilities in connection with the sale or rental of a dwelling; or

(D) to represent to a person that a dwelling is not available for inspection, sale, or rental when the dwelling is in fact so available.

(2) It is unlawful for a person:

(A) to make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement relating to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on sexual orientation or gender identity and expression or an intention to make any such preference, limitation, or discrimination; or

(B) for profit, to induce or attempt to induce a person to sell or rent, or to not sell or rent, a dwelling by representations that a person or persons of a particular sexual orientation or with a particular gender identity or expression are present in or may enter into the neighborhood.

(b) Discrimination in housing financing. It is unlawful for any bank, building and loan association, insurance company, or other person whose business, in whole or in part, consists of the making of real estate loans to, on the basis of sexual orientation or gender identity and expression:

(1) deny any person a loan or other financial assistance for the purchase, construction, improvement, repair, or maintenance of a dwelling; or

(2) discriminate against any person in the fixing of the amount, interest rate, duration, or other terms or conditions of a loan or other financial assistance for the purchase, construction, improvement, repair, or maintenance of a dwelling.

(c) Discrimination in providing brokerage services. It is unlawful for any person, because of sexual orientation or gender identity and expression:

(1) to deny another person access to, membership in, or participation in any multiple listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings; or

(2) to discriminate against another person in the terms or conditions of access to, membership in, or participation in any multiple listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings.

(d) Exceptions.

(1) This section does not apply to the following:

(A) The sale or rental of any single-family dwelling, if the owner:

(i) does not own an interest in or title to more than three single-family dwellings at one time, regardless of whether the dwellings are located inside or outside of the city;

(ii) has resided in the dwelling within the 24-month period preceding the sale or rental of the dwelling; and

(iii) does not use the services or facilities of any real estate broker, agent, or salesman, or of any other person in the business of selling or renting dwellings, in connection with the sale or rental of the dwelling.

(B) The rental of a dwelling that is occupied or intended to be occupied by no more than four families living independently of each other, when the owner actually maintains and occupies part of the dwelling as a residence.

(C) The rental of a dwelling by a private organization only to its members, when the dwelling is owned, controlled, or managed by the organization for other than a commercial purpose and the rental of the dwelling is incidental to the organization's primary purpose.

~~[(D) The rental of a dwelling in which rooms are leased, subleased, or rented only to persons of the same sex, when the dwelling contains common lavatory, kitchen, or similar facilities available for the use of all persons occupying the dwelling.]~~

(e) Nothing in this section prohibits conduct against a person because of the person's conviction by a court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance under state or federal law."

SECTION 7. That Subsection (a) of Section 46-10, "Investigation," of Article III "Enforcement," of Chapter 46, "Unlawful Discriminatory Practices Relating to Sexual Orientation and Gender Identity and Expression," of the Dallas City Code, as amended, is amended to read as follows:

"(a) Upon the filing of a complaint, the administrator shall commence a prompt and full investigation to determine the facts behind the complaint and whether there is reasonable cause to believe an unlawful practice was committed, except that no investigation may commence if, after personally reviewing the allegations with the complainant, the administrator determines that the complaint does not come within the scope of this chapter. Within 15 days after ~~[Upon]~~ determining that a particular complaint does not come within the scope of this chapter, the administrator shall give the complainant a clear and concise explanation of the reasons why it does not and take no further action on the complaint."

SECTION 8. That, unless specifically provided otherwise by this ordinance or by state law, a person violating a provision of this ordinance is, upon conviction, punishable by a fine not to exceed \$500.

SECTION 9. That Chapter 46 of the Dallas City Code shall remain in full force and effect, save and except as amended by this ordinance.

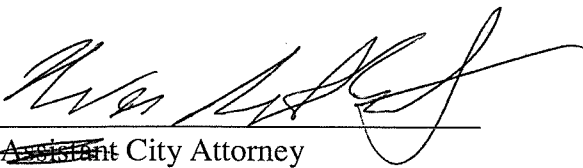
SECTION 10. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of Chapter 1 of the Dallas City Code, as amended.

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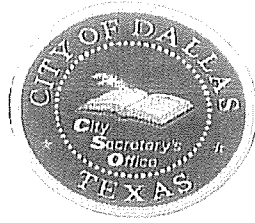
SECTION 11. That this ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:

WARREN M.S. ERNST, City Attorney

By  _____
~~Assistant~~ City Attorney

Passed _____ NOV 10 2015



PROOF OF PUBLICATION – LEGAL ADVERTISING

The legal advertisement required for the noted ordinance was published in the Dallas Morning News, the official newspaper of the city, as required by law, and the Dallas City Charter, Chapter XVIII, Section 7.

DATE ADOPTED BY CITY COUNCIL NOV 10 2015

ORDINANCE NUMBER 29942

DATE PUBLISHED NOV 14 2015

ATTESTED BY: