

ORDINANCE NO. 2017-__

An Ordinance adding Sections 15-40 thru 15-54, Article III, Chapter 15 of the Code of Ordinances of the City of Jackson, Michigan to provide for a nondiscrimination ordinance to protect the general welfare of the residents of Jackson.

THE PEOPLE OF THE CITY OF JACKSON ORDAIN:

Section 1. Purpose.

The City Council adopts this non-discrimination ordinance for the health, safety, and welfare of the citizens of the City of Jackson.

Section 2. That Sections 15-40 thru 15-54 of Article III, Chapter 15 of the City of Jackson Code of Ordinances be adopted to read as follows:

Chapter 15 - HUMAN RELATIONS

ARTICLE III. – NON-DISCRIMINATION ORDINANCE

Sec. 15-40. - Created, purposes.

- (a) It is the intent of the City of Jackson that no person 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 their actual or perceived race, color, religion, national origin, sex, age, height, weight, marital status, physical or mental disability, family status, sexual orientation, or gender identity.
- (b) As to sexual orientation and gender identity, the prohibitions against discrimination as provided for in this ordinance shall not be deemed preempted by federal or state law, but are intended to supplement state and federal civil rights law prohibiting discrimination in the areas of employment, public accommodations, and housing. Provided, however, this ordinance shall be construed and applied in a manner consistent with First Amendment jurisprudence regarding the freedom of speech and exercise of religion.

Sec. 15-41. – Definitions.

As used in this chapter, the following words and phrases have the following meanings:

- (a) “Age.” Chronological age.
- (b) “City Manager.” The City Manager of the City of Jackson or his or her designee.

- (c) “Discriminate.” To make a decision, offer to make a decision or refrain from making a decision based in whole or in part on the actual or perceived race, color, religion, national origin, sex, age, height, weight, marital status, physical or mental disability, family status, sexual orientation, or gender identity, of another person.
- (d) “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.
- (e) “Employer.” Any person employing one (1) or more persons.
- (f) “Employment agency.” A person who undertakes to procure employees for an employer or procures opportunities for individuals to be employed by an employer.
- (g) “Family Status.” The state of being in a family.
- (h) “Family.” Includes either of the following:
 - a. Two or more individuals related by blood within three degrees of consanguinity, marriage, adoption, in a foster care relationship or legal custody relationship.
 - b. Functional family. A collective number of individuals domiciled together in one dwelling whose relationship is of a permanent and distinctive domestic character, with a demonstrable and recognizable bond characteristic of a cohesive unit, and who are in fact cooking and living in a single non-profit housekeeping unit. However, A “functional family” shall not include:
 - i. Any group of individuals whose domestic relationship is transitory, temporary or resort/seasonal in nature.
 - ii. Any group of individuals whose association is essentially for convenience or economics or for the limited duration of their education, training or a similar determinative period of time.
- (i) “Gender Identity or Expression.” An individual’s appearance, expression, identity or behavior as being either male or female, whether or not that appearance, expression, identity and behavior is different from that which is traditionally associated with the person’s gender assigned at birth as being either female or male.
- (j) “Housing Facility.” Any dwelling unit or facility used or intended or designed to be used as the home, domicile or residence of one or more persons including, but not limited to, a house, apartment, rooming house, housing cooperative, hotel, motel, tourist home, retirement home or nursing home.

- (k) “Labor Organization.” An organization of any kind or structure in which employees participate or are members and which exists for the purposes, in whole or part, of dealing with employers concerning the terms and conditions of employment of its participants or members, whether or not such organization is subordinate to or affiliated with a national or international labor organization.
- (l) “Marital Status.” The stat of being married, never married, divorced, or widowed.
- (m) “Perceived.” Refers to the perception of the person who acts, and not to the perception of the person for or against whom the action is taken.
- (n) “Person.” The word “person” shall include any individual, co-partnership, corporation, association, club, joint adventure, estate, trust, and any other group or combination acting as a unit, and the individuals constituting such group or unit.
- (o) “Physical or Mental Disability.” A determinable physical or mental characteristic resulting from disease, injury, congenital condition of birth, or functional disorder and is unrelated to one’s ability to safely perform the work involved in jobs or positions available to such person for hire or promotion; or unrelated to one’s ability to acquire, rent and maintain property; or unrelated to one’s ability to utilize and benefits from the goods, services, activities, privileges and accommodations of a place of public accommodation. “Physical or Mental Disability” does not include any condition caused by the current illegal use of a controlled substance or the use of alcohol or liquor by an individual.
- (p) “Place of Public Accommodation.” An educational, governmental, health, entertainment, cultural, recreational, refreshment, transportation, financial institution, business or facility of any kind, whose goods, services, facilities, privileges, advantages or accommodations are extended, offered, sold, or otherwise made available to the public.
- (q) “Religious Organization.” An organization, church, group, or body of communicants that are organized not for pecuniary profit that regularly gathers for worship and religious purposes, and includes a religious-based private school that is not organized for pecuniary profit. Religious organization 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 tenants in students; and, faith based organizations that, due to a sense of duty based on particular religious tenants, provide charitable services to the public.
- (r) “Sexual Orientation.” Male or female homosexuality, heterosexuality or bisexuality, by orientation or practice, whether past or present. This includes emotional, romantic, and/or sexual attractions, or the absence thereof, to other people. Sexual orientation also refers to a person’s sense of identity based on those attractions, related behaviors, and membership in a community of others who share those attractions.

Sec. 15-42. – Discriminatory housing practices.

Except as otherwise provided in this ordinance, no person shall:

- (a) Discriminate in leasing, selling or otherwise making available any housing facilities.
- (b) Discriminate in the terms, conditions, maintenance or repair in providing any housing facility.
- (c) Discriminate in providing financing for the purchase, repair or remodeling of any housing facility.
- (d) Discriminate in making referrals, listings or otherwise providing information regarding a housing facility.

Sec. 15-43. – Discriminatory public accommodation practices.

Except as otherwise provided in this ordinance, no person shall discriminate in making available full and equal access to all goods, services, activities, privileges, and accommodations or any place of public accommodation. However, nothing in this ordinance:

- (a) Permits or requires access to any place of public accommodation for the purpose or intent of engaging in criminal conduct.
- (b) Requires the construction or provision of unisex single user restrooms, changing rooms, locker rooms or shower facilities.

Sec. 15-44. – Discriminatory employment practices.

Except as otherwise provided in this ordinance:

- (a) No employer shall discriminate in the employment, compensation, work classifications, conditions or terms, promotion or demotion, or termination of employment of any person.
- (b) 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.
- (c) No employment agency shall discriminate in the procurement or recruitment of any person for possible employment with any employer.
- (d) A person subject to Sec. 15-44 is exempt from this section if race, color, religion, national origin, sex, height, weight, marital status, physical or mental disability, family status, sexual orientation or gender identity is a bona fide occupational qualification reasonably necessary to the normal operation of the business or enterprise. A person

subject to Sec. 15-44 shall have the burden of establishing that the qualification is reasonably necessary to the normal operation of the business.

Sec. 15-45. – Exceptions.

Notwithstanding anything contained in this ordinance, the following shall not be violations of this ordinance:

- (a) For a religious organization to restrict the occupancy of any of its housing facilities or accommodations which are operated as a direct part of religious activities to persons of the denomination involved or to restrict employment opportunities for officers, religious instructors and clergy to persons of that denomination. It is also permissible for a religious organization to restrict employment opportunities, educational facilities, housing facilities, and homeless shelters or dormitories that are operated as a direct part of its religious activities to persons who are member of or who conform to the moral tenets of that religious organization.
- (b) Standards established for the construction, repair, maintenance, improvement, occupancy, lease or sale of one-family and two-family dwellings that conform to federal and state laws and regulations.
- (c) For the owner or operator of a housing facility or place of public accommodation, devoted entirely to the housing and accommodation of individuals of one sex, to restrict occupancy and use on the basis of sex.
- (d) To limit occupancy in a housing project or to provide public accommodations or employment privileges or assistance to persons of low income, persons over fifty-five (55) years of age or disabled persons.
- (e) To engage in a bona fide effort to establish an affirmative action program to improve opportunities in employment consistent with applicable state or federal law.
- (f) To discriminate based on a person's age when such discrimination is required by state, federal, or local law.
- (g) To refuse to enter a contract with an emancipated minor.
- (h) To refuse to admit to a place of public accommodation serving alcoholic beverages to a person under the legal age for purchasing alcoholic beverages.
- (i) To refuse to admit to a place persons under eighteen (18) years of age to a business providing entertainment or selling literature that the operator of said business deems unsuitable for minors.
- (j) For an educational institution to limit the use of its facilities to those affiliated with such institution.

- (k) To provide discounts on products or services to students, or on the basis of age.
- (l) To discriminate in any arrangement for the shared ownership, lease or residency of a dwelling unit.
- (m) For a governmental or educational institution to restrict any of its facilities or to restrict employment opportunities based on duly-adopted institutional policies that conform to federal and state laws and regulations.
- (n) To restrict participation in an instructional program, athletic event or on an athletic team that conforms to federal and state laws and regulations.
- (o) This ordinance shall not apply to a private club, or other establishment not in fact open to the public, except to the extent that the goods, services, facilities privileges, advantages or accommodations of the private club or establishment are made available to the customers or patrons of another establishment that is a place of public accommodation or is licensed by the State under Act No. 8 of the Public Act of 1933, being MCLA 436.1-436.58, the Michigan Liquor Control Act as amended. This exemption shall not apply to a private club that is otherwise defined as a place of public accommodation in this ordinance. Further, to the extent that the private club permits members to invite guests on the premises, such organization is not exempted as it concerns a member's guest.
- (p) To the employment of an individual by one's family.
- (q) For an employer offering health or pension plans to provide marital or familial status limitations in such plans provided those limitations conform to state and federal laws, rules and regulations.
- (r) To the rental of housing facilities in a building which contains dwelling units for not more than two families living independently of each other if the owner of the building or a member of the owner's family resides in one of the dwelling units, or to the rental of a room or rooms in a single-family dwelling by an individual if the lessor or a member of the lessor's family resides in the dwelling.
- (s) To allow use of facilities or services by persons that may be affiliated with, or otherwise supported by, a religious organization, which may espouse policies or practices inconsistent with the general intent of this ordinance.
- (t) With respect to gender only, to a private educational institution which provides an education to only persons with one gender.

Sec. 15-46. – Information and investigation.

- (a) If any individual has a complaint alleging a violation of this chapter, he/she has one thirty (30) calendar days from the date of the individual's knowledge of the allegedly

discriminatory action or thirty (30) calendar days from the date when the individual should have known of the alleged discriminatory action to file a complaint with the City's Human Relations Commission. If an individual fails to file a complaint alleging a violation of this chapter within the specified time frame, the Human Relations Commission will not consider the complaint.

- (b) If the individual can file a complaint with the Michigan Department of Civil Rights, or the Equal Employment Opportunity Commission, the complaint must be filed with that agency and no complaint may be filed with the City of Jackson. Complaints involving discrimination based on religion, race, color, national origin, age, sex, height, weight, familial status, or marital status must be filed with the Michigan Department of Civil Rights. Complaints involving discrimination in employment because of race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age (40 or older), disability or genetic information must be filed with the Equal Employment Opportunity Commission. The City may only investigate allegations of sexual orientation or gender identity discrimination.
- (c) The complaint should be made in writing to the Human Relations Commission. The complaint may be filed in person, by e-mail, or by mail. The complaint must contain information about the alleged discrimination, such as the name, address, and phone number of the complainant, as well as the location, date and description of the alleged violation of this chapter.
- (d) Upon receipt, the Human Relations Commission will review the complaint and shall:
 - a. Review the complaint.
 - b. Provide a copy of the complaint to the City Manager's designee who shall distribute copies to the City Council forthwith for informational purposes only.
 - c. Provide a copy of the complaint to the City Attorney for investigation and prosecution, if warranted.
- (e) With respect to complaints filed by current city employees, the Human Relations Commission will refer such employees to any applicable processes contained in collective bargaining agreements and/or city policies and procedures. If a current employee has exhausted any such processes, he/she may file a complaint with the Human Relations Commission in accordance with the provisions of this section.
- (f) The Human Relations Commission must forward the complaint to the City Attorney within 90 days of receipt of the complaint. If additional time is necessary, the Human Relations Commission will notify the complainant of the need for additional time.
- (g) All communications with the complainant regarding actions taken or additional time being needed will be in writing, with a copy to the City Attorney. The City Attorney will notify the Human Relations Commission in writing of actions taken by the City

Attorney's office on complaints referred to that office by the Human Relations Commission.

- (h) All complaints received by the Human Relations Commission and responses from the Human Relations Commission will be retained by the City of Jackson for a duration established by the City of Jackson Open Data and Public Records Policy.
- (i) The Human Relations Commission will provide an annual report to City Council regarding the complaints received and actions taken.
- (j) No individual shall provide false information to any authorized individual investigating a complaint regarding a violation of this chapter.
- (k) For an investigation, the City Attorney may request a person to produce books, papers, or records or other documents that may be relevant to a violation or alleged violation of this chapter. If said person does not comply with such a request, the City Attorney may apply to the Jackson County Circuit Court for an order requiring production of said materials.

Sec. 15-47. – Conciliation agreements.

In cases involving alleged violations of this chapter, the City Attorney may enter into agreements whereby persons agree to methods of terminating discrimination or to reverse the effects of past discrimination. The Human Relations Commission may review such agreements. Conciliation agreements must be approved by the City Council. Violations of such agreements shall be violations of this chapter.

Sec. 15-49. - Penalties.

- (a) A violation of any provision of this chapter is a civil infraction punishable by a fine of not more than \$500.00 for each day upon which a violation occurs, plus all court costs and the costs of prosecution, and all other penalties permitted in accordance with the Municipal Civil Infractions Act, MCL 600.8727 et seq. as amended. A civil infraction may be issued by the City Attorney on behalf of the individual alleging discrimination.
- (b) Each day upon which a violation occurs shall constitute a separate and new violation.
- (c) Nothing contained in this ordinance shall be construed to limit in any way the remedies, legal or equitable, which are available to the City or any person for the prevention or correction of discrimination.

Sec. 15-50. – Interpretation.

- (a) This Non-Discrimination Ordinance shall not be read to prohibit or interfere with a religious institutions' or person's free exercise of religion as protected by the First Amendment to the United States Constitution, and Article 1, Section 4, of the Michigan Constitution.

- (b) This Non-Discrimination Ordinance shall not modify any state statute addressing criminal sexual conduct, stalking, harassment, infliction of emotional distress, or any similar or corresponding laws of the State of Michigan.

Sec. 15-53. – Repealer.

All former ordinances or parts of ordinances conflicting or inconsistent with the provisions of this ordinance are repealed.

Sec. 15-54. – Severability.

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

Section 3. This ordinance takes effect thirty (30) days from the date of adoption.