

## ORDINANCE NUMBER 3428

AN ORDINANCE OF THE MISSOULA CITY COUNCIL, AMENDING MISSOULA MUNICIPAL CODE TITLE 9 PUBLIC PEACE, MORALS AND WELFARE TO ADD CHAPTER 9.64 ENTITLED "ILLEGAL DISCRIMINATION" GENERALLY PROHIBITING DISCRIMINATORY PRACTICES IN THE AREAS OF EMPLOYMENT, PUBLIC ACCOMMODATIONS AND HOUSING ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, ANCESTRY, RELIGION, CREED, SEX, AGE, MARITAL OR FAMILIAL STATUS, PHYSICAL OR MENTAL DISABILITY, SEXUAL ORIENTATION, GENDER IDENTITY OR GENDER EXPRESSION; AND AMENDING SECTION 2.94.030 ENTITLED "PERCENT FOR ART PROGRAM ESTABLISHED", SECTION 5.82.080 ENTITLED "NONDISCRIMINATION", SECTION 9.12.010 ENTITLED "HOUSING DISCRIMINATION DECLARED UNLAWFUL" AND SECTION 12.58.100 ENTITLED "EXCEPTIONS".

BE IT ORDAINED BY THE MISSOULA CITY COUNCIL THAT MISSOULA MUNICIPAL CODE TITLE 9, CHAPTER 64, SECTIONS 9.64.010 THROUGH 9.64.090 BE ADDED AND THAT SECTION 2.94.030, SECTION 5.82.080, SECTION 9.12.010, AND SECTION 12.58.100 BE AMENDED AS FOLLOWS:

### **Title 9.64 Illegal Discrimination**

#### **Sections:**

9.64.010	Purpose and Intent
9.64.020	Definitions
9.64.030	Employment discrimination prohibited
9.64.040	Discrimination in public accommodations prohibited
9.64.050	Housing discrimination prohibited
9.64.060	Discrimination in educational institutions prohibited
9.64.070	Retaliation prohibited
9.64.080	Posting of notices
9.64.090	Violation – Penalty and Civil Remedy

#### **Section 1**

**9.64.010 Purpose and Intent.** It is the intent of the City of Missoula that no person shall be denied his or her civil rights or be discriminated against based upon 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, gender identity or expression. The city council declares that such discrimination prohibitions are necessary and desirable for the following reasons:

- A. The city deems it necessary consistent with Montana's illegal discrimination law to identify, protect and safeguard the right and opportunity of all persons to be free from discrimination as identified in Montana's illegal discrimination laws as well as to address and make it illegal to discriminate on the basis of sexual orientation, gender identity or expression.
- B. 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 creates strife and unrest and deprives the city of its full capacity for economic development by decreasing productivity and increasing demand for city services.
- C. The city has received public testimony and written complaints from citizens reporting instances of discrimination. The city finds that existing state and federal laws regarding discrimination do not adequately address all discriminatory acts reported by the city's diverse residents. The city deems it necessary to adopt local regulations adapted to the needs of its citizens.
- D. 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 and exercise of religion.

## **Section 2**

**9.64.020 Definitions.** As used in this chapter , unless the context requires otherwise, the following definitions apply:

- (1) "Age" means the length of time from the date of birth.
- (2) "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 actual or perceived race, color, national origin, ancestry, religion, creed, sex, age, marital or familial status, physical or mental disability, sexual orientation, gender identity or expression, or because of their association with a person or group of people so identified. Discrimination based on physical or mental disability includes the failure to make reasonable accommodations that are required by an otherwise qualified person who has a physical or mental disability. An accommodation that would require an undue hardship or that would endanger the health or safety of any person is not a reasonable accommodation.
- (3) "Educational institution" means a public or private institution and includes 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 an educational institution.
- (4) "Employee" means an individual employed by an employer.
- (5) "Employer" means an employer of one or more persons or an agent of the employer but does not include a fraternal, charitable, or religious association or corporation if the association or corporation is not organized either for private profit or to provide accommodations or services that are available on a nonmembership basis.
- (6) "Employment agency" means a person undertaking to procure employees or opportunities to work.
- (7) "Familial status" means having a child or children who live or will live with a person. A distinction based on familial status includes one that is based on the age of a child or children who live or will live with a person.
- (8) "Gender identity or expression" means a gender-related identity expression, or behavior, regardless of the individual's sex at birth.
- (9) "Housing accommodation" means 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.
- (10) "Labor organization" means 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.
- (11) "Marital status" means being married, never married, divorced, or widowed.
- (12) "Perceived" refers to the perception of the actor, and not to the perception of the person for or against whom the action is taken.
- (13) "Person" means 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.
- (14) (a) "Physical or mental disability" means:
  - (i) a physical or mental impairment that substantially limits one or more of a person's major life activities;
  - (ii) a record of such an impairment; or
  - (iii) a condition regarded as such an impairment.(b) Discrimination based on, because of, on the basis of, or on the grounds of physical or mental disability includes the failure to make reasonable accommodations that are required by an otherwise qualified person who has a physical or mental disability. An accommodation that would require an undue hardship or that would endanger the health or safety of any person is not a reasonable accommodation.
- (15) (a) "Public accommodation" means 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, esthetics, or manicuring salon or shop, bathroom, resthouse, theater, swimming pool, skating rink, golf course, cafe, ice cream parlor, transportation company, or hospital and all other public amusement and business establishments.

(b) 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 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 subsection (20), any lodge of a recognized national fraternal organization is considered by its nature distinctly private.

Legislative note: Pursuant to subsection 7-1-111(3) MCA the provisions of the ordinance do not apply to or affect "the public school system."

(16) "Sexual orientation" means heterosexuality, bisexuality, or homosexuality.

### **Section 3**

#### **9.64.030 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.

### **Section 4**

**9.64.040 Discrimination in public accommodations prohibited.** It shall be unlawful for a place of public accommodation to deny, directly or indirectly, any person the full and equal access enjoyment of the goods, services, activities, facilities, privileges, advantages, and accommodations for a discriminatory reason.

### **Section 5**

**9.64.050 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 sleeping rooms within the residence.

### **Section 6**

**9.64.060 Discrimination in educational institutions prohibited.** It shall be unlawful for any educational institution to deny, restrict, abridge or condition the use of, or access to, any educational facilities or services to any person for a discriminatory reason.

### **Section 7**

**9.64.070 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.

### **Section 8**

**9.64.080 Posting of notices.** Every employer, business, or entity subject to this chapter shall post in a conspicuous location a notice stating, "Discrimination on the basis of actual or perceived race, color, national origin, ancestry, religion, creed, sex, age, marital or familial status, physical or mental disability, sexual orientation, gender identity or expression is prohibited by the Missoula Municipal Code." Entities subject to this chapter may provide the notice by posting it where employee notices are customarily placed.

### **Section 9**

#### **9.64.090 Violation – Penalty and Civil Remedy.**

- A. Any illegal discrimination specifically addressed by Montana State law shall be submitted to the Montana Department of Labor pursuant to Title 49, Chapters 2 and 3, Montana Code Annotated for processing by the State of Montana. Pursuant to sections 3-6-103 and 3-11-103 Montana Code Annotated it is intended that violations of sections 9.64.010 through 9.64.080 Missoula Municipal Code not specifically addressed by Montana State law are to be civil municipal ordinance violations intended to be enforceable solely by the complaining person claiming a violation of these sections or their authorized representative through a civil proceeding within the exclusive jurisdiction of the City of Missoula Municipal Court. The Montana Rules of Civil Procedure shall apply, except and unless the City of Missoula Municipal Court establishes alternative rules of civil procedure for matters within the exclusive jurisdiction of the City of Missoula Municipal Court.
- B. Any person claiming a violation of this chapter may seek remedies, injunctive relief, or other equitable relief by petition to the municipal court, or any other court of competent jurisdiction. Any person claiming a violation of this ordinance must seek such relief within:
- (1) 180 days of the last alleged violation,
  - (2) 180 days of the conclusion of a grievance proceeding initiated by the complainant in accordance with a procedure as established by a contract, written rule or policy, or collective bargaining agreement, or
  - (3) 300 days of the last alleged violation if a grievance proceeding initiated by the complainant in accordance with a procedure as established by a contract, written rule or policy, or collective bargaining agreement has not been completed within 120 days of initiation of the proceeding.

The initiation of or the granting of relief under a grievance procedure shall not preclude or limit any other claims or remedies available under this chapter. Defendants shall not collect attorney's fees unless the claim is clearly frivolous, unreasonable, or factually groundless, or the claimant continued to litigate after the claim clearly became so.

- C. In instances where the City of Missoula Municipal Court has found that the defendant in any civil proceeding pursuant to this chapter has violated a section of the chapter three or more times within a twelve (12) month time period, any Fourth and subsequent violations during any twelve (12) month time period may also be charged and prosecuted as a misdemeanor violation—and may be fined up to five hundred dollars for each violation. There shall be no imprisonment as a penalty for a violation of this chapter

### **Section 10.**

**2.94.030 Percent for Art Program established.** There is hereby established a Percent for Art Program. The Mayor is responsible for directing the program and shall appoint a Public Art Committee, with the advice of the Public Art Committee and the advice and consent of the City Council, to coordinate and administer the program.

The Percent for Art Program focuses on the outside and the inside of new and remodeled City owned public spaces. The art may serve a function, express a theme, or commemorate an important person. It may underscore or provide a counterpoint to the architecture and surrounding site. It may serve as a landmark that adds definition to the City of Missoula.

- A. The Percent for Art Program requires one percent (1%) of eligible construction costs of City capital improvement projects paid wholly or in part by the City of Missoula to construct or remodel any public or city building, structure, park or any portion thereof to be allocated for public art. No less than eighty percent (80%) of this one percent (1%) will be used for on-site Artwork. No more than twenty percent (20%) will be deposited in a Public Art Trust Fund used to fund additional art projects and provide maintenance for existing works. In cases where the eligible construction costs of a City capital improvement project is less than \$100,000, and at the discretion of the Public Art Committee, a particular piece of on-site art is not required and one hundred percent (100%) of the one percent (1%) may be deposited in the Public Art Trust Fund.

The Percent for Art Program shall be implemented without discrimination based on actual or perceived (as defined in MMC 9.64.020) race, religion, sex, marital or familial status, color, national origin, ancestry, creed, physical or mental disability, age, sexual orientation, or gender identity or expression.

## **Section 11.**

### **5.82.080 Nondiscrimination.**

- A. Services and Facilities Availability. No franchisee shall unlawfully discriminate against any person in the provision of cable television services on the basis of actual or perceived (as defined in MMC 9.64.020) race, color, religion, national origin, ancestry, sex, sexual orientation, or gender identity or expression, age, disability, income or the area in which the person lives. The franchisee shall use best efforts to assure maximum practical availability of the franchisee services and facilities to all subscribers, regardless of disability, including the provision of a remote control device to those subscribers who are mobility limited, or where a member of the subscriber's household is mobility limited.
- B. Hearing Impaired. For hearing impaired customers, the franchisee shall provide information concerning the cost and availability of equipment to facilitate the reception of all basic services, including - but not necessarily limited to - all extended basic tiers, for the hearing impaired.

## **Section 12.**

### **9.12.010 Housing discrimination declared unlawful.**

- A. It is unlawful for any person, owner, manager, employee, or any entity whose business includes engaging in any residential real estate related transactions including but not limited to the sale, lease or rental of any housing accommodation or property to discriminate against any person because of actual or perceived (9.64.020) sex, age, race, physical or mental disability, creed, religion, color, national origin, ancestry, marital or familial status, sexual orientation, or gender identity or expression, when making available such housing accommodations for sale, lease or rental. 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 sleeping rooms within the residence.
- B. As used in this section, the terms set forth in this subsection shall have the meanings set forth in the Federal 1988 Fair Housing Amendments Act and shall include the following:
- (1) "Discrimination" means and includes:
- a. A refusal to permit, at the expense of the disabled person, reasonable modification of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises;
  - b. A refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or
  - c. In connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is thirty months after the date of enactment of the Fair Housing Amendments Act of 1988, a failure to design and construct those dwellings in such a manner that:
    - i. The public use and common use portions of such dwellings are readily accessible to and usable to disabled persons,

- ii. All the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by disabled persons in wheelchairs, and
  - iii. All premises within such dwelling contain the following features of adaptive design:
    - An accessible route into and through the dwelling,
    - Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations,
    - Reinforcements in bathroom walls to allow later installation of grab bars, and
    - Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space;
- (2) "Familial status" means having a child or children who live or will live with a person. A distinction based on familial status includes one that is based on the age of a child or children who live or will live with a person.
- (3) "Disability discrimination" means and includes:
- a. To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of:
    - i. That buyer or renter,
    - ii. A person residing in or intending to reside in that dwelling after it is sold, rented, or made available, or
    - iii. Any person associated with buyer or renter,
  - b. 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 with such dwelling, because of a disability of:
    - i. That person, or
    - ii. A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available, or
    - iii. Any person associated with that person;
- (4). For purposes of this subsection "residential real estate related transaction" means any of the following:
- a. The making or purchasing of loans or providing other financial assistance:
    - i. For purchasing, constructing, improving, repairing, or maintaining a dwelling, or
    - ii. Secured by residential real estate,
  - b. The selling, brokering, or appraising of residential real property.

**Section 13.**

**12.58.100 Exceptions.** The mayor may grant exceptions to the provisions of Section 12.58.030 (B)(1) (pertaining to liability insurance requirement limits) and/or Section 12.58.030(B)(4) (pertaining to hours of event) taking into account the general public health, safety and welfare associated with the request for exception, as well as the liability risk and the applicant's ability to pay. When the mayor considers requests for exceptions, the mayor shall base the mayor's decision on the factual circumstances presented and decide the specific request on its merits and the mayor may not discriminate on the basis of actual or perceived (as defined in MMC 9.64.020) race, color, national origin, ancestry, religion, creed, political ideas, sex, age, marital or familial status, physical or mental disability, sexual orientation, or gender identity or expression, unless based on a bona fide liability risk, general welfare, health or safety reason(s).

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

PASSED by a 10 ayes, 2 nays, 0 abstentions, and 0 absent vote and

APPROVED on this 13<sup>th</sup> day of April, 2010.

ATTEST:

APPROVED:

/s/ Martha L. Rehbein  
Martha L. Rehbein, CMC  
City Clerk

/s/ John Engen  
John Engen  
Mayor