

1st reading: _____

2nd reading: _____

3rd reading: _____

RECORD OF ORDINANCES

GOVERNMENT FORMS & SUPPLIES 644-224-3538 FORM NO. 2043

Ordinance No. _____ Passed _____, 20____

ORDINANCE AMENDING AND ADOPTING SECTION 39.01 OF THE CODIFIED ORDINANCES OF THE CITY OF BOWLING GREEN, CONCERNING UNLAWFUL DISCRIMINATION

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BOWLING GREEN, COUNTY OF WOOD, AND STATE OF OHIO:

SECTION 1: Section 39.01 is hereby amended to include the following definition:

SEX. Sex means male, female, neither, or both, or being perceived as male, female, neither, or both. The terms "because of sex" and "on the basis of sex" include but are not limited to pregnancy, any illness arising out of pregnancy, childbirth, or related medical conditions, breastfeeding or pumping, or other sexual or reproductive health decisions.

- (A) For the purposes of this section the term "sexual or reproductive health decisions" means decisions relating to the use or intended use of products or services for contraception, sterilization, fertility treatment, pregnancy or its termination, hormone therapy including that which alters gender expression or affirms gender identity, or medical treatments that affirm gender identity. Nothing in this division shall be construed to require an employer to provide health insurance benefits for sexual or reproductive health products or services.

SECTION 2: This ordinance shall take effect at the earliest time permitted by law.

Passed: _____
Date President of Council-Mark Hollenbaugh

Attest: _____
Clerk of Council-Jodi Sickler

Approved: _____
Date Mayor-Michael A. Aspacher

HUNTER BROWN
CITY ATTORNEY
jls

CHAPTER 39: UNLAWFUL DISCRIMINATION

Section

- 39.01 Definitions
- 39.02 Prohibited acts of discrimination; employment
- 39.03 Prohibited acts of discrimination; business establishments or public accommodations
- 39.04 Prohibited acts of discrimination; educational institutions
- 39.05 City services, facilities, transactions, and contracts
- 39.06 General exceptions
- 39.07 Complaint procedure
- 39.08 Enforcement
- 39.09 Failure to comply with lawful order
- 39.10 Judicial review
- 39.11 Additional remedies preserved

§ 39.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADVERTISING. To make, print, publish, advertise or otherwise disseminate any notice, statement or advertisement, with respect to any employment activity, any business activity or any educational activity.

AGE. Eighteen years of age or older, except as otherwise provided by law.

BUSINESS ESTABLISHMENT. Any entity, however organized, which furnishes goods, services or accommodations to the general public. An otherwise qualifying establishment which has membership requirements is considered to furnish services to the general public if its membership requirements consist only of payment of fees or consist only of requirements under which a substantial portion of the residents of the city could qualify.

DISABILITY or DISABLED. With respect to an individual, a physical or mental impairment, a record of such an impairment, or being perceived or regarded as having such impairment. For purposes of this chapter, discrimination on the basis of disability means that no covered entity shall discriminate against a qualified individual with a disability because of that individual's disability. The term **QUALIFIED INDIVIDUAL WITH A DISABILITY** shall mean an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment positions that the individual holds or desires.

DISCRIMINATE, DISCRIMINATION or DISCRIMINATORY. Any act, policy or practice that, regardless of intent, has the effect of subjecting any person to differential treatment as a result of that person's actual or perceived race, ethnicity, color, religion, national origin, immigration status, gender, gender expression, gender identity, sex, pregnancy, age, sexual orientation, creed, ancestry, disability, military status, veteran status, marital status, family status, physical characteristics, HIV status, source of income, or genetic information.

EDUCATIONAL INSTITUTION. Any public educational institution, including an academy, college, elementary or secondary school, extension course, kindergarten, pre-school, nursery school, university, and any business, nursing, professional, secretarial, technical or vocational school.

EMPLOYEE. Any individual employed or seeking employment from an employer.

EMPLOYER. Any person who, for compensation, regularly employs five or more individuals, not including the employer's parents, spouse or children. For purposes of this chapter an employer regularly employs five individuals when the employer employs five or more individuals for each working day in any 20 or more calendar weeks in the current or previous calendar year. For purposes of this chapter an **EMPLOYER** is also any person acting on behalf of an employer, directly or indirectly, or any employment agency.

GENDER. Actual or perceived sex.

GENDER IDENTITY OR EXPRESSION. Having or being perceived as having a gender identity or expression, whether or not that gender identity or expression is different from that traditionally associated with the sex assigned to that individual at birth.

LABOR ORGANIZATION. Any organization that exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection on behalf of employees.

PERSON. A natural person, firm, corporation, partnership or other organization, association or group of persons however

arranged.

PHYSICAL CHARACTERISTIC. A bodily condition or bodily characteristic of any person that is from birth, accident, or disease, or from any natural physical development, including individual physical mannerisms, including but not limited to height and weight. Physical characteristic shall not relate to those situations where a bodily condition or characteristic will present a danger to the health, welfare or safety of any individual.

PLACE OF PUBLIC ACCOMMODATION. Inns, taverns, hotels, motels, restaurants, wholesale outlets, retail outlets, banks, savings and loan associations, other financial institutions, credit information bureaus, insurance companies, dispensaries, clinics, hospitals, theaters, recreational parks and facilities, trailer camps, garages, public halls, and all other establishments within the city which offer goods, services, accommodations and entertainment to the public. A **PLACE OF PUBLIC ACCOMMODATION** does not include any institution, club or other place of accommodation which, by its nature, is distinctly private.

SEXUAL ORIENTATION. Actual or perceived heterosexuality, homosexuality or bisexuality.

(Ord. 7906, passed 8-17-2009; Am. Ord. 8934, passed 6-7-2021)

§ 39.02 PROHIBITED ACTS OF DISCRIMINATION; EMPLOYMENT.

(A) With regard to employment, it shall be unlawful for any employers or labor organizations to engage in any of the following acts, wholly or partially for a discriminatory reason:

- (1) To fail to hire, refuse to hire or discharge an individual;
- (2) To discriminate against any individual, with respect to compensation, terms, conditions, or privileges of employment, including promotion. Nothing in this section shall be construed to require any employer to provide benefits, such as insurance, to individuals not employed by the employer;
- (3) To limit, segregate, or classify employees in any way which would deprive or tend to deprive any employee of employment opportunities, or which would otherwise tend to adversely affect his or her status as an employee;
- (4) To fail or refuse to refer for employment any individual in such a manner that would deprive an individual of employment opportunities, that would limit an individual's employment opportunities, or that would otherwise adversely affect an individual's status as a prospective employee or as an applicant for employment;
- (5) To discriminate against an individual in admission to, or employment in, any program established to provide apprenticeship or other job training, including an on-the-job training program;
- (6) To print or publish, or cause to be printed or published, any discriminatory notice or advertisement relating to employment. This division shall not be construed so as to expose the person who prints or publishes the notice or advertisement, such as a newspaper, to liability;
- (7) To discriminate in referring an individual for employment, whether the referral is by an employment agency, labor organization or any other person.
- (8) For any employer, employment agency or labor organization to discriminate against any person because the individual has opposed any practice forbidden by this chapter, or because the individual has made a complaint or testified or assisted in any manner any investigation or proceeding under this chapter.
- (9) For any person, whether or not an employer, employment agency or labor organization, to aid, incite, compel, coerce or participate in the doing of any act declared to be an unlawful discriminatory practice by this chapter, or to obstruct or prevent any person from enforcing or complying with the provisions of this chapter, or to attempt directly or indirectly to commit any act declared by this chapter to be an unlawful discriminatory practice.

(Ord. 7906, passed 8-17-2009; Am. Ord. 8934, passed 6-7-2021)

§ 39.03 PROHIBITED ACTS OF DISCRIMINATION; BUSINESS ESTABLISHMENTS OR PUBLIC ACCOMMODATIONS.

It shall be unlawful for a business establishment or place of public accommodation to engage in any of the following acts wholly or partially for a discriminatory reason:

- (A) To deny, directly or indirectly, any person the full enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any business establishment or place of public accommodation;
- (B) To print, publish, circulate, post, or mail, directly or indirectly, a statement, advertisement, or sign which indicates that the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a business establishment or place of public accommodation will be unlawfully refused, withheld from or denied an individual, or which indicates that an individual's patronage of, or presence at, the business establishment or place of public accommodation is objectionable, unwelcome, unacceptable or undesirable.

(Ord. 7906, passed 8-17-2009; Am. Ord. 8934, passed 6-7-2021)

§ 39.04 PROHIBITED ACTS OF DISCRIMINATION; EDUCATIONAL INSTITUTIONS.

It shall be unlawful for an educational institution to engage in any of the following acts wholly or partially for a

discriminatory reason:

(A) To deny, restrict, abridge or condition the use of or access to any educational facilities or educational services to any person otherwise qualified;

(B) Notwithstanding the provisions of division (A) of this section, it shall not be an unlawful discriminatory practice to limit attendance in classes or programs conducted by an educational institution based upon a reasonable educational objective, except where to do so would otherwise violate a duty imposed upon the institution by federal or state law to provide reasonable accommodation;

(C) Notwithstanding the provisions of division (A) of this section, it shall not be an unlawful discriminatory practice for an educational institution operated by a religious or denominational institution, or established for a bona fide religious purpose, to admit students or program attendees on the basis of that student's or attendee's religious or denominational affiliation or preference.

(Ord. 7906, passed 8-17-2009; Am. Ord. 8934, passed 6-7-2021)

§ 39.05 CITY SERVICES, FACILITIES, TRANSACTIONS, AND CONTRACTS.

(A) The city shall be bound by the provisions of this chapter to the same extent as private individuals.

(B) All contractors proposing to, or currently doing business with the city, shall abide by this chapter.

(Ord. 7906, passed 8-17-2009; Am. Ord. 8934, passed 6-7-2021)

§ 39.06 GENERAL EXCEPTIONS.

(A) Any practice which has a discriminatory effect and which would otherwise be prohibited by this chapter shall not be deemed unlawful if it can be established that the practice is not intentionally devised to contravene the prohibitions of this chapter and there exists no less discriminatory means of satisfying a business purpose.

(B) Unless otherwise prohibited by law, nothing contained in this chapter shall be construed to prohibit promotional activities such as senior citizen discounts and other similar practices designed primarily to encourage participation by a protected group.

(C) It shall not be an unlawful discriminatory practice for an employer to observe the conditions of a bona fide seniority system or a bona fide employee benefit system such as a retirement, pension or insurance plan which is not a subterfuge or pretext to evade the purposes of this chapter.

(D) Nothing in this chapter shall bar a fraternal organization from giving preference to members of such fraternal organization or from making such selection as is calculated by such organization to promote the aims, purposes or fraternal principles for which it is established or maintained. This chapter shall not apply to any religious corporation, organization, or association, nor shall it apply to the Bowling Green Christian Academy or St. Aloysius school. The application and enforcement of the protections created herein are limited solely to the terms of this chapter and such terms shall not create nor enhance protected class status for any other purpose including public and private affirmative action program eligibility. The term **AFFIRMATIVE ACTION PROGRAM** shall include any program administered by any private or public entity for the purpose of providing preferential treatment for those in a protected class. Any practice which has a discriminatory effect and which would otherwise be prohibited by this chapter shall not be deemed unlawful if it can be established that such practice is not intentionally devised or operated to contravene the prohibitions of this chapter and can be justified by business necessity. Under this chapter, a "business necessity" exception is applicable only in each individual case where it can be proved by a respondent that, without such exception, such business cannot be conducted; a "business necessity" exemption cannot be justified by the factors of increased costs to business, business efficiency, the comparative characteristics of one group as opposed to another, the stereotyped characterizations of one group as opposed to another, and the preferences of co-workers, employers, customers or any other person.

(E) Nothing contained in this chapter shall be deemed to prohibit selection or rejection based solely upon a bona fide occupational qualification or a bona fide physical requirement.

(Ord. 7906, passed 8-17-09; Am. Ord. 8066, passed 12-6-2010; Am. Ord. 8934, passed 6-7-2021)

§ 39.07 COMPLAINT PROCEDURE.

(A) *Administration.* The Municipal Administrator and City Council President Pro-tem and Chairperson of the City's Human Relations Commission, or their designees, hereinafter referred to as "the panel" may conduct investigations, hearings, and conciliation, make determinations, issue orders and perform such duties as are necessary and appropriate to the administration of this chapter. The panel is authorized to establish rules and procedures for the administration of this chapter.

(B) *Complaints.*

(1) *Preliminary investigation.* Whenever it is charged in writing by a person or aggrieved organization, hereinafter referred to as "complainant", that any person, employer, employment agency, or labor organization, hereinafter referred to as the "respondent", has engaged in or is engaging in any unlawful discriminatory practice as defined in this chapter, the panel may initiate a preliminary investigation. Such charge shall be filed within six months after the alleged unlawful

discriminatory practice is committed. If it is determined by the panel after such preliminary investigation that it is not likely that an unlawful discriminatory practice has been or is being engaged in, the complainant and respondent shall be notified that it has been so determined, and that no other action will be initiated under this chapter.

(2) *Informal conciliation.* If it is determined, after such preliminary investigation, that it is likely that an unlawful discriminatory practice has been or is being engaged in, the panel may endeavor to eliminate such practice by informal methods of conciliation. If the panel is satisfied that an alleged unlawful discriminatory practice of the respondent will be or has been eliminated, he or she may treat the complaint as conciliated and notify the complainant and respondent that no other action will be initiated under this chapter. If informal methods of conciliation fail to effect the elimination of such alleged unlawful discriminatory practice and it is determined by the panel that the alleged unlawful discriminatory practice is conduct over which the state and/or federal government has exercised jurisdiction and provided a mechanism for redress to an aggrieved party, the panel shall notify the complainant and respondent that no other action will be taken pursuant to this chapter and will provide complainant with information relating to appropriate state or federal legislation and enforcement agencies which may have jurisdiction.

(3) *Determination hearing.* If informal methods of conciliation fail to effect the elimination of such alleged unlawful discriminatory practice, and it is determined by the panel that the state or federal government has not exercised jurisdiction and provided mechanism for redress, the panel may cause to be served upon the respondent and complainant a notice of a determination hearing notifying the respondent of a hearing at a time and place therein fixed to be held not less than 14 days after the service of such notice and stating the charges specified in the original charge against the respondent. If circumstances warrant, the panel may serve such notice at any time during the complaint procedure. The respondent shall have the right to appear at such hearing in person, and the complainant shall be a party to the proceeding. No person shall be compelled to be a witness against himself in any determination hearing, formal or informal. In conducting any determination hearing as provided herein, the panel may request the attendance as witness of any person believed to have knowledge or facts relevant to such hearing. The panel may also request the attendance of individuals as experts or resources where deemed helpful.

(4) *Conciliation.* If, upon all the evidence presented, the panel determines that the respondent has engaged in, or is engaging in, any unlawful discriminatory practice under this chapter, whether against the complainant or others, the panel may endeavor to eliminate such practice by way of conference and conciliation.

(5) *Notice of violation and order to cease and desist.* If conference and conciliation fails to effect the elimination of such unlawful discriminatory practice or to obtain conciliation of the matter, or if the panel determines that efforts to conciliate would be futile, the panel may issue a notice of violation and may issue an order to respondent to cease and desist the unlawful discriminatory practice. The notice of violation and order to cease and desist of the panel shall be served on the respondent and complainant, with notice that if the panel determines that after 30 calendar days following service of its order the respondent has not eliminated or corrected the unlawful discriminatory practice, the panel shall take action to refer the matter to the Municipal Administrator or the Municipal Administrator's designee for civil or criminal enforcement.

(Ord. 7906, passed 8-17-2009; Am. Ord. 8934, passed 6-7-2021)

§ 39.08 ENFORCEMENT.

If, after 30 calendar days following service of an order to cease and desist, the respondent has not eliminated or corrected the unlawful discriminatory practice, the Municipal Administrator is authorized to impose a fine of \$100 per day for each day of substantial noncompliance with the provisions of this chapter, but not to exceed a total of \$1,000. The Municipal Administrator is authorized to institute, through the City Prosecutor in the name of the city, any appropriate civil enforcement proceedings.

(Ord. 7906, passed 8-17-2009; Am. Ord. 8934, passed 6-7-2021)

§ 39.09 FAILURE TO COMPLY WITH LAWFUL ORDER.

Any person who commits an unlawful discriminatory practice under any of the provisions of this chapter and fails to obey any order of the Municipal Administrator or his or her duly authorized designee to cease and desist such unlawful discriminatory practice shall be guilty of failure to comply with an unlawful discriminatory practice order, a misdemeanor of the fourth degree.

(Ord. 7906, passed 8-17-2009; Am. Ord. 8934, passed 6-7-2021)

§ 39.10 JUDICIAL REVIEW.

A complainant or respondent aggrieved by an order of the panel or the Municipal Administrator, including an order dismissing a complaint or stating the terms of a conciliation agreement, may obtain judicial review, and the Municipal Administrator may obtain an order of the court for enforcement of his or her order, in a proceeding brought in the municipal court. A proceeding under this section must be initiated within 30 days after the panel or the Municipal Administrator issued his or her order.

(Ord. 7906, passed 8-17-2009; Am. Ord. 8934, passed 6-7-2021)

§ 39.11 ADDITIONAL REMEDIES PRESERVED.

(A) Any person injured by any act in violation of the provisions of this chapter shall have a civil cause of action in

municipal court.

(B) A civil cause of action under this section shall be filed in a municipal court within one year after the alleged discriminatory practice ceases, or within 30 days of an order by the panel under § 39.07. Any such action shall supersede any complaint before the panel or Municipal Administrator concerning the same alleged violations and any such administrative action shall be closed upon such filing.

(Ord. 7906, passed 8-17-2009; Am. Ord. 8934, passed 6-7-2021)

Ordinance amending and adopting section 39.01 of the codified ordinances of the City of Bowling Green, concerning unlawful discrimination. Council Member Rubando brought forward this ordinance and provided the following description:

The unlawful discrimination protections found in Chapter 39 of BG's Codified Ordinances protect individuals against discrimination, including in the workplace, business establishments, places of public accommodation, and education institutions. Protected classes include race, ethnicity, religion, age, and sexual orientation, among many others. Originally passed in 2009, Chapter 39 currently includes "sex" as a protected class. The intent of the ordinance on Council's agenda is to add a definition of "sex" that expressly protects people's reproductive healthcare decisions, gives protections to breastfeeding mothers, as well as pregnant individuals or those seeking to become pregnant. The language also makes express that nothing in the definition of "sex" can be construed to require an employer to provide health insurance benefits for sexual or reproductive health products or services.