



AGENDA MEMORANDUM

Item No: 5A.
Meeting Date: May 26, 2015
From: Al Minner, City Manager
Subject: Leesburg Discrimination Policy

Staff Recommendation:

Staff recommends hearing attached ordinance and setting public hearing and second reading.

Analysis:

Pursuant to a request from the City Commission, the attached modification changes the City's Discrimination Policy to protect against sexual preference discrimination.

Submission Date and Time: 5/21/2015 8:44 AM

Department: _____ Prepared by: _____ Attachments: Yes___ No ___ Advertised: ___ Not Required ___ Dates: _____ Attorney Review : Yes___ No ___ Revised 6/10/04	Reviewed by: Dept. Head _____ Finance Dept. _____ Deputy C.M. _____ Submitted by: City Manager _____	Account No. _____ Project No. _____ WF No. _____ Budget _____ Available _____
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ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF LEESBURG, FLORIDA, CREATING ARTICLE II OF CHAPTER 15 OF THE CITY OF LEESBURG CODE OF ORDINANCES; PROHIBITING DISCRIMINATION AGAINST INDIVIDUALS DUE TO RACE, COLOR, RELIGION, NATIONAL ORIGIN, MARITAL STATUS, AGE, GENDER, SEXUAL ORIENTATOIN, GENDER IDENTITY, OR HANDICAP, IN PUBLIC ACCOMMODATIONS, FINANCIAL SERVICES, AND EMPLOYMENT; CREATING LIMITED EXCEPTIONS FOR CERTAIN RELIGIOUS ORGANIZATIONS; PROHIBITING RETALIATION AGAINST PERSONS WHO FILE COMPLAINTS; PROVIDING DEFINITIONS; PROVIDING FOR ENFORCEMENT; REPEALING CONFLICTING ORDINANCES; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE CITY OF LEESBURG, FLORIDA:

SECTION I.

§§15-1 through 15-16, inclusive, of the City of Leesburg Code of Ordinances, are hereby consolidated into what shall henceforth be known as Article I of Chapter 15 of the Code, to be entitled "General Offenses."

SECTION II.

Article II of Chapter 15 of the Code is hereby created, to be known as "Antidiscrimination Provisions," to read as follows:

ARTICLE II. ANTIDISCRIMINATION PROHIBITIONS.

Sec. 15-20. - Unlawful Discriminatory Practices in Public Accommodations.

- (1) Prohibition. It shall be an unlawful discriminatory practice to discriminate or separate on the basis of race, color, religion, national origin, marital status, age, sex, sexual orientation, gender identity or handicap, any place of public accommodation in the City.
- (2) Establishments Covered. A place of public accommodation within the meaning of this Section shall include, but not be limited to, the following establishments which serve the public:
 - a. Any inn, hotel, motel or other establishment which provides lodging to transient guests, other than an establishment located within a building which

contains not more than two units for rent or hire and which is actually occupied by the owner of such establishment as the owner's residence.

- 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 any retail establishment, or any gasoline station.
- c. Any bar, lounge, nightclub or other facility principally engaged in selling alcoholic beverages for consumption on the premises, or any facility principally engaged in selling both food and alcoholic beverages for consumption on the premises.
- d. Any motion picture house, theater, concert hall, sports arena, stadium, convention hall or other place of exhibition or entertainment.
- e. Any library or educational facility supported in part or whole by public funds, public conveyance (to include taxis, limousines, and buses), barber and beauty shop, hospital, laundry, swimming pool, nursery, kindergarten or day care center.
- f. Any establishment which is physically located within the premises of any establishment otherwise covered by this Section.
- g. Any establishment within the premises of which is physically located any covered establishment, and which holds itself out as serving patrons of the covered establishment.

(3) Limitations and Exemptions.

- a. The provision of this Section shall not apply to a private club or other establishment not in fact open to the public, except to the extent that the facilities of such establishment are made available to the customers or patrons of such an establishment within the scope of subsection (2) above.
- b. Nothing in this Section shall prohibit a religious organization, association or society, or any non-profit institution or organization, operating, supervised or controlled by or in conjunction with a religious organization, association or society, from limiting facilities and accommodations which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons.
- c. Nothing in this Section shall prohibit the limiting of the use of kindergartens, nurseries, day care centers, theaters and motion picture houses to persons of a particular age group.

Sec. 15-21. - Unlawful Discriminatory Practices by Financial Institutions.

It shall be an unlawful discriminatory practice for any person, bank, trust company, private banker, savings bank, industrial bank, savings and loan association, credit union, investment company, mortgage company, insurance company or other financial institution or lender, doing business in the City and if incorporated, regardless of whether incorporated under the laws of the State of Florida, the United States or any other jurisdiction, to whom application is made for financial assistance for the purchase, acquisition, construction,

rehabilitation, repair or maintenance of any housing accommodation, or any officer, agent, or employee thereof:

- (1) To discriminate against any such applicant or applicants because of the race, religion, color, national origin, sex, sexual orientation, gender identity or marital status, of such applicant or applicants or of any member, stockholder, director, officer, or employee of such applicant or applicants, or of the prospective occupants or tenants of such housing accommodation, in the granting, withholding, extending or renewing, or in the fixing of the rates, terms or conditions of any such financial assistance.
- (2) To use any form of application for such financial assistance or to make any record or inquiry in connection with applications for such financial assistance which expresses, directly or indirectly, any limitation, specification or discrimination as to race, religion, color, national origin, sex, sexual orientation, gender identity or marital status.

Sec. 15-22. - Aiding and Abetting in Discriminatory Practices.

It shall be an unlawful discriminatory practice for any person to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this Chapter, or to attempt to do so.

Sec. 15-23. - Retaliation.

It shall be an unlawful discriminatory practice for any person engaged in any activity to which this Chapter applies to retaliate or discriminate against any person because he has opposed any practices forbidden under this Chapter or because he has filed a complaint, testified or assisted in any proceeding under this Chapter.

Sec. 15-24. - Violation of Conciliation Agreement.

It shall be an unlawful discriminatory practice for any party to a conciliation agreement made pursuant to this Chapter to violate the terms of such agreement.

Sec. 15-25. - Religious Exception.

Nothing contained in this Chapter shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization, from limiting employment or sales or rental of housing accommodations or admission to or giving preference to persons of the same religion or denomination or from making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained, as it may be permitted by State and Federal law, rules and regulations.

Sec. 15-26. - Unlawful Discriminatory Practices in Employment.

It shall be an unlawful discriminatory practice:

- (1) For an employer, because of the race, religion, color, national origin, sex, sexual orientation, gender identity, age, handicap or marital status of any individual, to refuse to hire or employ or to bar or to discharge from employment such individual

or to discriminate against such individual in compensation or in terms, conditions or privileges of employment. The addition of "sexual orientation" shall not be deemed to require the extension of any employee benefits to persons who are not married as that term is defined by Florida law.

- (2) For an employment agency to discriminate against any individual because of an individual's race, religion, color, national origin, sex, sexual orientation, gender identity, age, handicap or marital status in receiving, classifying, disposing or otherwise acting upon applications for its services or in referring an applicant or applicants to an employer or employers.
- (3) For a labor organization, because of the race, religion, color, national origin, sex, sexual orientation, gender identity, age, handicap or marital status of any individual, to exclude or to expel from its membership such individual or to discriminate in any way against any of its members or against any employer or any individual employed by any employer.
- (4) For any employer or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with perspective employment, which expresses, directly or indirectly, any limitation, specifications or discrimination as to race, religion, color, national origin, sex, sexual orientation, gender identity, age, handicap or marital status or any intent to make any such limitation, specification or discrimination, unless based upon a bona fide occupational qualification.

Nothing contained in this section shall be construed to prohibit discrimination where said discrimination is based on a bona fide occupational qualification reasonably necessary to the normal operation of a particular business or enterprise; nor shall anything in this section be construed to affect the retirement policy or system of any employer where such policy or system is not merely a subterfuge to evade the purposes of this section; nor shall anything in this section be deemed to preclude the varying of insurance coverages according to an employee's age. This bona fide occupational exemption shall be interpreted narrowly.

Sec. 15-27. – Definitions.

As used in §§15-20 through 15-27 of the Code of Ordinances, the terms listed below shall have the meanings shown:

- (1) "Age." The prohibition against age discrimination shall be limited to individuals who are at least forty (40) years of age.
- (2) The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work.
- (3) "Employee" means any individual employed by the employer except that neither the term "employee" nor this title includes any individual employed by his or her own parents, spouse or child, nor in the domestic service of any person.

- (4) "Employment agency" means any person regularly undertaking, with or without compensation, to procure employees for an employer or to procure for employees opportunities to work.
- (5) "Employer" means any person who has more than five (5) full-time employees working more than thirty (30) hours per week, or who has more than ten (10) employees irrespective of the number of hours per week, in each of thirteen (13) or more calendar weeks in the current or preceding calendar year, and any agent of such a person.
- (6) The term "family" includes the grandparents, parents, children, brothers, and sisters, whether by marriage or blood, and their spouses and children of either the property owner or spouse of the property owner.
- (7) "Gender Identity" includes actual or perceived sex, and shall also include a person's gender identity, self-image, appearance, expression or behavior, whether or not that gender identity, self-image, appearance, expression or behavior is different from that traditionally associated with the sex assigned to that person at birth.
- (8) "Handicapped persons" or "persons with a disability" mean persons who:
 - a. Have a physical or mental impairment which substantially limits one or more of such persons' major life activities;
 - b. Have a record of such impairment; or
 - c. Are regarded as having such an impairment. A handicapped person does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of employment, or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.
- (9) "Labor organization" means any organization which 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 in connection with employment.
- (10) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.
- (11) The term "public accommodation, resort or amusement" shall be as defined in Section 15-20.
- (12) The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that it is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.
- (13) The term "sexual orientation" means the condition of being heterosexual, homosexual or bisexual. This definition is not intended to permit any practice prohibited by federal, state or local law and it is not intended to require or create any special preferences in employment or contracting.
- (14) The term "unlawful discriminatory practice" includes only those practices specified in §§15-20 through 15-26 of the Code of Ordinances.

Sec. 15-28. Complaint Procedure.

Anyone aggrieved by a violation of this Article may file a complaint utilizing the procedure specified below, which shall be processed by the City as indicated:

- (1) A complaint must be filed with the City Manager or the person designated by the City Manager to receive such complaints, within no more than 90 days after the date of the alleged unlawful discriminatory practice.
- (2) The complaint must be in writing, signed by the complainant, verified or affirmed by the complainant, and shall contain the following information:
 1. The name, address and telephone number of the complainant.
 2. The identity and address of the alleged violator.
 3. The date, time, and place of the alleged unlawful discriminatory practice.
 4. A general statement of the facts of the offense, including the basis for the offense (e.g. race, color, religion, national origin, marital status, age, sex, sexual orientation, gender identity or handicap).
- (3) Within fifteen (15) days after the filing of the complaint, the City shall transmit a copy of the same to each alleged violator named therein by certified mail, return receipt requested. Thereupon, the alleged violators may file a written, verified answer to the complaint within twenty (20) days of the date of the receipt of the complaint.
- (4) Within thirty (30) days after the filing of the answer to the complaint, or if no answer is filed, after the date on which the answer was due, the City Manager or designee shall make such investigation as deemed appropriate to ascertain facts and issues. If the City Manager or designee determines there is not probable cause to believe the alleged discriminatory practice occurred, the City Manager or designee shall take no further action with respect to the alleged offense. If the investigation determines there are reasonable grounds to believe a violation has occurred, the City Manager or designee shall attempt to conciliate the matter by methods of initial conference and persuasion with all interested parties and such representatives as the parties may choose to assist them. Conciliation conferences shall be informal and nothing said or done in the course of the informal conference with the individuals to resolve the dispute may be public or used as evidence in a subsequent proceeding by either party without the written consent of both the complainant and the alleged violator(s).
- (5) If the parties desire to conciliate, the terms of the conciliation shall be reduced to writing and must be signed and verified by the complainant and alleged violator(s), and approved by the City Manager or designee. The conciliation agreement shall be for conciliation purposes only and shall not constitute an admission by any party that Article II, Chapter 15, has been violated.
- (6) If the parties are unable to resolve the complaint after the parties, in good faith, have attempted conciliation; the City Manager or designee shall notify both the complainant and the alleged violator(s) within thirty (30) days after determination the complaint cannot be resolved amicably, and shall issue written confirmation the initial investigation into the complaint did find probable cause to believe the violation occurred, which shall be furnished to both the complainant and the alleged

violator(s). Thereafter the complainant may pursue any remedy provided by State or Federal law.

- (7) The procedure prescribed by this Article does not constitute an administrative prerequisite to another action or remedy available under other provisions of State or Federal law. Nothing in this article shall be deemed to modify, impair or otherwise affect any right or remedy conferred by the Constitution or laws of the United States or the State of Florida, and the provisions of this Article shall be supplemental to any remedies provided by such other laws.

SECTION III.

If any section, subsection, sentence, clause or phrase of this Article is for any reason held illegal, invalid or unconstitutional by the decision of any court or regulatory body of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof. The City Commission hereby declares that it would have passed this Article and each section, subsection, sentence, clause and phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared illegal, invalid or unconstitutional, unless severance of the invalidated portion would destroy the overall intent and effectiveness of this Article.

SECTION IV.

All existing ordinances in conflict with this Article are hereby repealed.

SECTION V.

This Ordinance shall take effect immediately upon its passage and adoption according to law.

PASSED AND ADOPTED at the regular meeting of the City Commission of the City of Leesburg, Florida, held on the _____ day of _____, 2015.

THE CITY OF LEESBURG, FLORIDA

BY: _____
ELISE DENNISON, Mayor

Attest: _____
ANDI PURVIS, City Clerk