

Agenda Items



FROM THE DESK OF . . .

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MEMORANDUM

To: Mayor & City Council
Date: Friday, June 13, 2014
Subject: Non-Discrimination Ordinance

Attached for the Council's review and discussion June 16 is a draft Non-Discrimination Ordinance (NDO) as requested in a Jan. 27, 2014, Council initiative. The proposed ordinance is similar in many ways to those already adopted in Bozeman, Butte-Silver Bow, Helena and Missoula. It differs from some or all of the others, however, in the following ways:

- It excludes Federal, State and County government employers within the City of Billings, although the City itself is included.
- In several places, it adds the phrase "non-binary" to the usual listed categories of Lesbian, Gay, Bisexual and Transsexual (LGBT). At the June 9 City Council meeting, there were several speakers who referred to the categories of LGBTQ (for Queer or Questioning). According to Wikipedia, non-binary is an acceptable alternative to Queer, which has negative connotations for many. A non-binary individual is one who identifies as other than a man or a woman. Germany has recently enacted and Australia has for more than a decade had laws that allow residents to identify themselves as "X", rather than male or female, on birth certificates or other documents.
- It limits the jurisdiction of the ordinance to acts and/or incidents occurring within the boundaries of the City of Billings.
- In places of public accommodation where users normally appear in the nude, users may be required to use the facilities designated for their anatomical sex, regardless of their gender identity.
- Persons who believe they are discriminated against first must file a complaint with the Montana Human Rights Bureau. The Bureau chief has indicated to City Attorney Brent Brooks that they will investigate the complaint even though the State of Montana has yet to adopt an NDO.
- If the Human Rights Bureau responds that the matter does not fall within its jurisdiction, the persons who believe they have been discriminated against may file a municipal infraction complaint with the Billings Police Department or Municipal Court.
- Persons who believe they have been discriminated against may also file a civil proceeding. However, they must choose between their own private civil action or a municipal infraction and cannot pursue both.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY ADDING SECTIONS TO BE NUMBERED 7-1801 through 7-1808; PROHIBITING DISCRIMINATION AGAINST PERSONS BASED ON SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, VETERAN'S STATUS, POLITICAL BELIEFS, OR OBESITY.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

Section 1. That Chapter 7, Businesses and Business Regulations, of the Billings, Montana City Code is hereby amended by adding a new Article 7-1800, adding sections to be numbered 7-1801 through 7-1808:

Article 7-1800

ILLEGAL DISCRIMINATION

7-1801: INTENT AND PURPOSE: State and/or federal law prohibit the denial of civil rights or discrimination on the basis of age, race, color, national origin, ancestry, religion, creed, sex, pregnancy, marital status, familial status (solely for housing), and physical or mental disability. In addition to these protections, it is the intent of the City of Billings that no person shall be denied his or her civil rights or be discriminated against based upon his or her sexual orientation, gender identity or expression, Veteran's status, political beliefs or obesity.

The City Council declares that such discrimination prohibitions are necessary and desirable because existing state and federal laws regarding discrimination do not expressly or clearly address all discriminatory acts reported by the City's diverse residents. Therefore, the City deems it necessary to adopt local regulations adapted to the needs of its citizens. Nothing in this title is intended, however, to conflict with state and federal laws, or 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.

7-1802: DEFINITIONS: As used in this Article, unless the context requires otherwise, the following definitions apply:

Discrimination: "Discrimination", "discriminate" or "discriminatory" means any act, policy, or practice that has the effect of unfavorably subjecting any person to different or separate treatment because of his or her actual or perceived sexual orientation, gender identity or expression, Veteran's status, political beliefs, obesity or association with a

person or group of people so identified, or on the belief that a person has a particular sexual orientation, gender identity or expression, Veteran's status, political belief, or obesity, even if that belief is incorrect.

Employee: An individual employed by an employer.

Employer: An employer of one or more persons or an agent of the employer. It does not include a fraternal, charitable, or religious association or corporation unless the association or corporation is organized either for private profit or to provide accommodations or services that are available on a non-membership basis. It does not include any political subdivision except the City of Billings.

Employment agency: A person undertaking to procure employees or opportunities to work.

Gender identity or expression: A gender-related identity, expression, or behavior, regardless of the individual's sex at birth.

Housing accommodation: 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. It does not include dormitories or other sleeping quarters provided by universities, colleges, or other post-secondary schools.

Labor organization: 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.

Non-binary: gender identities other than man or woman.

Person: 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.

Political subdivision: federal, state or county government employers or public schools located within the boundaries of the City of Billings.

Public accommodation:

- (a) 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, rest-house, theater, swimming pool, skating rink, golf course, café, ice cream parlor, transportation company, 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 definition, any lodge of a recognized national fraternal organization is considered by its nature distinctly private.
- (c) “Public accommodation” does not include a church or other religious association or corporation, except to the extent it maintains a place described in subsection (a), other than a bathroom.
- (d) “Public accommodation” does not include a private educational institution with a curriculum based in whole or in part upon religious faith.
- (e) Nothing contained herein shall be construed as a requirement to construct additional facilities such as bathrooms, locker rooms, dressing rooms at any place of public accommodation as defined above.

Sexual orientation: Heterosexuality, bisexuality, homosexuality, transgender, or non-binary.

7-1803: PROHIBITED DISCRIMINATION – Jurisdiction; Exclusions: The prohibited discrimination set forth in this Article applies only to acts and/or incidents occurring within the boundaries of the City of Billings, Montana. This article does not apply to acts or incidents involving political subdivisions.

7-1804: 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.

7-1805: DISCRIMINATION IN PUBLIC ACCOMMODATIONS PROHIBITED: It shall be unlawful for a place of public accommodation to deny, directly or indirectly, any person full and equal access or enjoyment of the goods, services, activities, facilities, privileges, advantages, and accommodations for a discriminatory reason. However, in any place of public accommodation where users ordinarily appear in the nude, users may be required to use the facilities designated for their anatomical sex, regardless of their gender identity, but may use facilities designated as a family bathroom or bathrooms for use by any sex. Such requirement does not constitute unlawful discrimination for purposes of this Section.

7-1806: 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.

7-1807: RETALIATION PROHIBITED: No person shall coerce, threaten, discharge, expel, blacklist, or otherwise retaliate against another person for opposing any practices prohibited by this title, making a complaint, or assisting in an investigation or proceeding regarding an alleged violation of this title; 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.

7-1808: VIOLATION – CIVIL REMEDY – EXHAUSTION OF HUMAN RIGHTS BUREAU REMEDY

Any person claiming a violation of this chapter may seek civil remedies, injunctive relief, attorney fees or other equitable relief by petitioning the Billings Municipal Court or by seeking to have a municipal infraction issued.

(1) Prior to the filing of a petition or seeking to have a municipal infraction issued in the Billings Municipal Court under this Article, a person must have:

- (a). Timely filed a complaint with the Montana Human Rights Bureau within the time frames set forth in Section 49-2-501, MCA, alleging discrimination in employment, public accommodations or housing, or retaliation; and

(b). Received a written disposition of the complaint from the Montana Human Rights Bureau, Montana Department of Labor & Industry Hearings Bureau, Montana Human Rights Commission, or any Montana court indicating that the acts of alleged discrimination or retaliation underlying the complaint do not fall within the scope of the Montana Human Rights Act.

(2) Within ninety (90) days of receipt of the written disposition from the Montana Human Rights Bureau as referenced in (1)(b), a person claiming a violation of this Article may either file a petition with the Billings Municipal Court or file a complaint requesting the investigation of an alleged municipal infraction by the Billings Police Department, but not both. It is intended that violations of this Article 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 this Article or their authorized representative through a civil proceeding or a municipal infraction within the exclusive jurisdiction of the Billings Municipal Court. The Montana Rules of Civil Procedure shall apply, except and unless the Billings Municipal Court establishes alternative rules of civil procedure for matters within the exclusive jurisdiction of the Billings Municipal Court.

To the extent allowed by law, a person filing a civil action claiming a violation of this Article may seek civil remedies, injunctive relief, costs, or other equitable relief incurred in the bringing of said claim and within the jurisdiction of Municipal Court. The Court in its discretion may allow the prevailing party a reasonable attorney's fee as part of the costs of suit.

Should a person claiming a violation of this Article choose the option of filing a complaint for a municipal infraction, then the procedure and civil penalties specified in section 18-1304, BMCC, shall exclusively apply.

Section 2. Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of these ordinances are declared to be severable.

Section 3. Repealer. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 4. Effective Date. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

APPROVED on first reading this ____ day of _____, 2014.

ADOPTED and APPROVED on second reading this ____ day of _____, 2014.

CITY OF BILLINGS

By _____
Thomas W. Hanel, Mayor

ATTEST:

By _____
Cari Martin, City Clerk

DRAFT 6/13/14