

AMENDED ORDINANCE NO. 4614

AN ORDINANCE OF THE CITY OF LEWISTON ENACTING A NEW SECTION TO THE LEWISTON CITY CODE TO BE CODIFIED AS CHAPTER 38, SECTIONS 1 THROUGH 7; PROHIBITING DISCRIMINATION IN HOUSING, EMPLOYMENT AND PUBLIC ACCOMMODATIONS BASED UPON FAMILIAL STATUS, SEXUAL ORIENTATION, AND/OR GENDER IDENTITY/EXPRESSION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, 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; and

WHEREAS, it is the policy and intent of the City of Lewiston that no person be denied equal protection of the laws; and,

WHEREAS, state and federal laws prohibit discrimination in the areas of employment, public accommodation, and housing on the basis of race, color, age, sex, national origin, and/or disability, but there are no similar protections against discrimination on the basis of familial status, sexual orientation or gender identity/expression; and

WHEREAS, the City deems it necessary to adopt local regulations adapted to the needs of its citizens; and

WHEREAS, nothing contained herein should be construed as supporting or advocating any particular doctrine, position, point of view, or religious view. To the contrary, it is the intention of this ordinance that all persons be treated fairly and equally in the City of Lewiston.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF LEWISTON:

SECTION 1: That a new chapter to be codified as Lewiston City Code Chapter 38

be and the same are hereby enacted to provide as follows:

Article I. Purpose and Intent, § 38.1:

Definitions, §38.2

Severability, § 38.3

Article II. Prohibited Discriminatory Acts, § 38.4

Exceptions, § 38.5

Penalty, § 38.6

Article III. Mediation, § 38.7

Sec. 38.1 Purpose and Intent.

It is the finding and the intent of the City of Lewiston 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/expression. The Lewiston City Council declares that such discrimination prohibitions are necessary and desirable for the following reasons:

A. It is the intent of this Chapter that all persons be treated fairly and equally, and it is the express intent of this Chapter to guarantee fair and equal treatment under the law to all people in the City of Lewiston. The denial of fair and equal treatment under the law due to familial status, sexual orientation and/or gender identity/expression is detrimental to the well-being, safety, and welfare of the City's citizens, and damages a city's economic well-being.

B. This Chapter shall be deemed an exercise of the police power of the City of Lewiston for the protection of the public welfare, prosperity, health and peace of the City of Lewiston, its residents and the community.

C. In order to ensure that all persons, regardless of familial status, sexual orientation and/or gender identity/expression enjoy the full benefits of citizenship and are afforded equal opportunities for employment, housing, commercial property and the use of public accommodations, the City of Lewiston has determined that

discrimination on the basis of familial status, sexual orientation and gender identity/expression must be addressed, and appropriate legislation enacted.

D. It is hereby declared to be public policy of the City of Lewiston that discriminatory practices are detrimental because they impede the social and economic progress of a city by preventing all of the City's citizens from contributing to the cultural, spiritual, social, and commercial life of the community. The contributions of all citizens of the City of Lewiston are essential to the City's growth, vitality, and prosperity.

E. It is hereby declared that every individual in the City of Lewiston has the right to seek work and earn wages through gainful employment, has the right to seek housing, and has the right to enjoy public accommodation and hospitality.

F. The prohibitions against discriminatory acts as provided for in this ordinance are intended to supplement state and federal civil rights laws prohibiting discrimination in the areas of employment, public accommodations, and housing. For complaints alleging discrimination on a basis proscribed under state or federal law (e.g. race, color, religious creed, ancestry, age, gender, national origin, and/or disability, the Complainant is advised of his or her right to file a report alleging a violation of Idaho Code section 18-7301 et. seq., and/or his or her right to file a complaint with the Idaho Commission on Human Rights and/or the Federal Equal Employment Opportunity Commission pursuant to Title VII of the Civil Rights Act of 1964 as amended, the Fair Housing Act of 1968 as amended, or the Americans with Disabilities Act 1990 as amended.

Sec. 38.2: Definitions

A. "DENY" includes any act which, directly or indirectly, by any person or his or her agent or employee, results or is intended or calculated to result in whole or in part in any discrimination, distinction, restriction, or unequal treatment or representation. It also includes, but is not limited to, the requiring of a person to pay a larger sum than the uniform rates charged other persons, or the refusing or withholding from persons the admission, patronage, custom, presence, frequenting, dwelling, staying or lodging in any place of public resort, accommodation, assemblage, or amusement except for conditions and limitations established by law and applicable alike to all persons, regardless of familial status, sexual orientation and/or gender identity/expression.

B. "DISCRIMINATION" is any direct or indirect exclusion, distinction, segregation, limitation, refusal, denial or other differentiation in the treatment of a person because of a person's actual or perceived familial status, sexual orientation and/or gender identity/expression or because of a person's association with any such person. Discrimination shall not be interpreted to require or to grant or accord any preferential treatment to any person because of that person's sexual orientation or gender identity/expression.

C. "FULL ENJOYMENT OF" shall be construed to include, but not be limited to, the right to use, rent or purchase real property, any service, commodity or article of personal property offered or sold by any person or establishment to the public, and the admission of any person to accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage or amusement, without acts directly or indirectly causing persons of any particular familial status, sexual orientation and/or gender identity/expression to be treated as not welcome, accepted, desired or solicited.

D. "GENDER IDENTITY/EXPRESSION" means a gender-related identity, appearance, expression or behavior of an individual regardless of a person's assigned sex at birth.

E. "HOUSING ACCOMMODATION" is 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.

F. "PERSON" shall mean any natural person, firm, corporation, partnership or other organization, association or group of persons however arranged.

G. "PLACE OF PUBLIC RESORT, ACCOMMODATION, ASSEMBLAGE OR AMUSEMENT" includes, but is not limited to any public place, licensed or unlicensed, kept for gain, hire or reward, or where charges are made for admission, service, occupancy or use of any property or facilities, whether conducted for the entertainment, housing or lodging of transient guests, or for the benefit, use or accommodation of those seeking health, recreation or rest, or for the sale of goods and merchandise, or for the rendering of personal services, or for the public conveyance or transportation on land, water, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where the public gathers, congregates, or assembles for amusement, recreation or public purposes, or public halls, public elevators and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or any educational institution wholly or partially supported by

public funds, or schools of special instruction, or nursery schools, or day care centers or children's camps; nothing herein contained shall be construed to include, or apply to, any institute, bona fide club, or place of accommodation, which is by its nature distinctly private, provided that where public use is permitted that use shall be covered by this section;

H. "SEXUAL ORIENTATION" is actual or perceived homosexuality, heterosexuality and/or bisexuality.

I. "FAMILIAL STATUS" means one or more persons under age 18 who reside with a parent, legal guardian, or designee of the parent or legal guardian with the parent's or legal guardian's written consent. Familial status also applies to persons who are pregnant and to persons who are in the process of gaining legal custody of an individual under the age of 18.

Sec. 38.3 Severability

If any section, phrase, clause, sentence or paragraph of this Chapter shall be declared unconstitutional or otherwise invalid by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining sections, phrases, clauses, sentences, paragraphs of this Chapter.

Sec. 38.4: Prohibited Discriminatory Acts

The following acts are prohibited and shall constitute a misdemeanor:

A. To unlawfully deny or discriminate against any other person because of familial status, sexual orientation, gender identity/expression the right to seek work:

(1) by failing or refusing to hire when otherwise qualified, (b) by discharging, (c) by barring from employment, (d) by otherwise discriminating against such person in compensation or in other terms or conditions of employment, or (e) otherwise unlawfully discriminating against an individual with respect to employment.

B. To unlawfully deny or discriminate against any person because of familial status, sexual orientation and/ or gender identity/expression the full enjoyment of any of the accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage, or amusement.

C. To unlawfully deny or discriminate against any person because of familial status, sexual orientation and/or gender identity/expression in the sale, purchase, lease or rental of any commercial property, housing accommodation, or to otherwise discriminate in the terms and conditions, maintenance, improvement or repair of any housing accommodation.

D. 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 the investigation or proceeding regarding an alleged violation of this Chapter; nor shall any person require, request to conspire with, assist, coerce, aid or abet another person to retaliate against a person for making a complaint or assisting in an investigation or proceeding pursuant to the terms of this Chapter.

Sec. 38.5: Exceptions

A. Nothing in this Chapter is intended to alter or abridge other rights, protections, or privileges secured under state and federal law. Moreover, this ordinance shall be construed and applied in a manner consistent with First Amendment jurisprudence regarding the freedom of speech, association, and exercise of religion.

B. This ordinance shall not apply:

1. To the rental of a housing accommodation for not more than two (2) families living independently of each other, if the lessor is an individual and said individual resides in one (1) of the housing accommodations; or

2. To the rental of a room or rooms in a single family residential housing accommodation by an individual if said individual resides in said single family residential housing.

3. To private clubs or other establishments not in fact open to the public.

4. To the religious activities of any church, synagogue, mosque, temple or other house of worship or other place used primarily for religious activities and ordained priests or ministers of any denomination engaged in such activities.

Sec. 38.6: Penalties

A. A violation of this Chapter is a misdemeanor and may be punishable by a fine of not more than one thousand (\$1000) dollars, or by incarceration in the county jail for a period not exceeding six (6) months, or both.

B. The prosecutor may reduce the violation to an infraction, payable by a one hundred (\$100) fine if the defendant engages in corrective actions, which may include, but are not limited to the following: appropriate remedial training for the defendant and/or the defendant's employees; the defendant's agreement to adopt and pursue a policy of nondiscrimination in its practices; and the defendant's agreement not to engage in discriminatory practices in the future.

C. Any person who falsely reports a violation of this Chapter may be charged with the crime of: **Providing false information to law enforcement, government agencies or specified professionals, Idaho Code Section 18-5413.**

D. A complaint filed under the provisions of this Chapter shall be filed within one hundred eighty (180) days of the alleged discriminatory conduct.

Sec. 38.7: Mediation

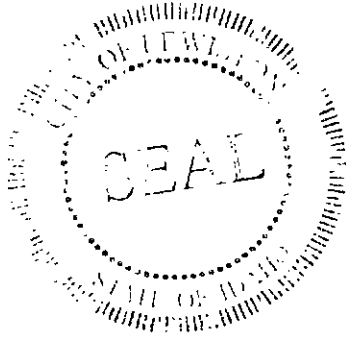
If, upon the completion of an investigation of a complaint made pursuant to the terms of this Chapter, the City Attorney finds that a violation of this Chapter has occurred, the City Attorney shall notify the Complainant and the Defendant of their right to engage in mediation and attempt to resolve the dispute prior to the filing of a criminal complaint. The mediator shall be appointed by the City Attorney and the costs of the mediation services shall be borne equally by the Complainant and the Defendant.

The City Attorney shall not otherwise participate in the mediation. The mediation will be conducted pursuant to the Idaho Rules of Criminal Procedure. In the event the parties successfully mediate the dispute then no charges will be brought by the City Attorney stemming from the common core of aggregate facts presented by the Complainant.

SECTION 2: This ordinance shall take effect and be in full force from and after its passage, approval and publication.

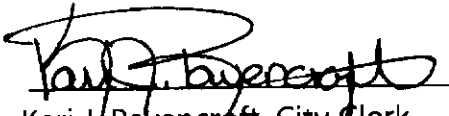
DATED this 29th day of October 2014.

CITY OF LEWISTON

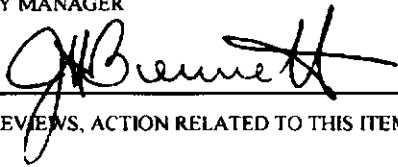



James Kleeburg, Mayor

ATTEST:


Kari J. Ravencroft, City Clerk

CITY COUNCIL MEETING AGENDA ITEM HISTORY/COMMENTARY

ITEM TITLE ORDINANCE NO. 4614, AN ORDINANCE OF THE CITY OF LEWISTON ENACTING A NEW SECTION TO THE LEWISTON CITY CODE TO BE CODIFIED AS CHAPTER 38, SECTIONS 1 THROUGH 7; PROHIBITING DISCRIMINATION IN HOUSING, EMPLOYMENT AND PUBLIC ACCOMMODATIONS BASED UPON FAMILIAL STATUS, SEXUAL ORIENTATION, AND/OR GENDER IDENTITY/EXPRESSION		AGENDA NO. _____ AGENDA DATE _____	1ST READING _____ 2ND READING _____ 3RD/ADOPTION _____
ORIGINATING SOURCE JIM BENNETT, CITY MANAGER Date: _____		FUNDING CERTIFICATION (IF APPLICABLE) Date: _____	
DIVISION MANAGER REVIEW (If applicable) Date: _____		DEPARTMENT MANAGER REVIEW (If applicable) Date: _____	
RECOMMENDED FOR COUNCIL ACTION	CITY MANAGER 	Date: 10/16/14	
ITEM HISTORY (PREVIOUS COUNCIL REVIEWS, ACTION RELATED TO THIS ITEM, OTHER PERTINENT HISTORY) <p>The City Council conducted the first reading of Ordinance No. 4614 at the regular meeting of September 8, 2014 and conducted the second reading of the ordinance on September 22, 2014. The ordinance was amended at the regular meeting of September 22, 2014 to add exceptions for private clubs or other establishments not open to the public and for religions organizations or entities controlled by religious organizations, including places of worship.</p>			
ITEM COMMENTARY (BACKGROUND, DISCUSSION, KEY POINTS, RECOMMENDATIONS, ETC) Please identify any or all impacts this proposed action would have on the City budget and/or personnel resources <p>The ordinance would amend the City Code to prohibit discrimination in housing, employment and public accommodations based upon familial status, sexual orientation and/or gender identity/expression.</p>			
ACTION PROPOSED <p>Staff recommends that the City Council conduct the third reading and consider the adoption of Ordinance No. 4614 as amended.</p>			