

FREQUENTLY ASKED QUESTIONS: FAIRNESS ORDINANCE

Updated 5.10.12

Is a vote of the people required to add protected classes to our local law?

No. The City Attorney has advised that protected classes may be added by ordinance and that a Charter amendment is unnecessary. The Charter specifically lists only five protected classes. Over the years, the City has added several additional categories by ordinance, including disability, familial status, ancestry, age, and marital status. Cities across the country who have adopted anti-discrimination protections typically do so by city ordinance, which makes it easier to make changes should there be unintended consequences.

Have other states and municipalities enacted similar ordinances?

Twenty-one states and the District of Columbia prohibit public and private employment discrimination on the basis of sexual orientation. Fifteen of those states and the District of Columbia also prohibit employment discrimination on the basis of gender identity. Several include additional protections for housing, health care, and public accommodations. At least 180 municipalities have enacted local ordinances prohibiting employment discrimination on the basis of sexual orientation, with about 60 of these ordinances also prohibiting employment discrimination on the basis of gender identity.

What is the definition of sexual orientation?

“**Sexual Orientation** means the actual or perceived heterosexuality, homosexuality, or bisexuality.” (*proposed L.M.C. 11.01.010*)

What is the definition of gender identity?

“**Gender Identity** shall mean the actual or perceived appearance, expression, identity, or behavior of a person as being male or female, whether or not that appearance, expression, identity, or behavior is different from that traditionally associated with the person’s designated sex at birth.” (*proposed L.M.C. 11.01.010*)

RELIGION

Does the ordinance provide religious exemptions?

Provisions have been made exempting churches and religious organizations from the new anti-discrimination provisions regarding employment, housing, and public accommodation. The Catholic Church proposed specific exemption language relating to public accommodation and housing, and this language was offered as an amendment to the Fairness Ordinance. Federal law under 42 U.S.C. § 2000e-1(a) and 2000e-2(e)(2) also provides ministerial exemptions to religious corporations and organizations and colleges or educational institutions owned or managed by a particular religion for employment.

What is the meaning of a religious organization?

The courts have more often than not found that organizations qualify as a “religious corporation, association, educational institution, or society” based on the totality of circumstances if they are closely affiliated with or owned by a church, significantly funded by a church, have a nonprofit religious corporate status and/or have religious policies that guide their organization.

EMPLOYMENT

What types of employers are covered by this ordinance?

L.M.C. 11.01.010 defines an employer as have four or more employees for each working day for twenty or more calendar weeks in a calendar year, but does not include a bona fide private membership club supported by membership fees or dues, other than a labor organization, which is exempt from taxation under Section 501(c) of the Internal Revenue Code of 1954, or a religious organization. This covers only employers in the city limits.

Will employers be forced to hire gay and/or transgendered people?

No, the ordinance does not require an employer to hire anyone, and it does not include any affirmative action elements. It simply prevents an employer from treating gay or transgendered people differently than anyone else.

Would employers be required to offer new domestic partner sick leave or health insurance benefits to gay and lesbian employees?

No, although if benefits are voluntarily provided to unmarried partners, those benefits should not be limited to only heterosexual partners or only homosexual partners.

Can an employer ask about an applicant's sexual orientation?

No. Under the ordinance an employer may not make any inquiry regarding sexual orientation in connection with prospective employment.

How does a company's dress code apply to transgender employees?

Employers have a right to establish employee dress and grooming guidelines during work hours if they are reasonable and serve a legitimate business purpose but should allow employees to comply within these provisions consistent with their gender identity.

HOUSING

What actions are unlawful with regard to housing under the ordinance?

It shall be unlawful for someone to refuse to sell or rent or negotiate a sale or transmit an offer, discriminate in the terms of a sale or rental, misrepresent that a property is unavailable when it is, advertise in a way to indicate preference or limitation, make a written or oral inquiry on status of an individual, or enact discriminatory covenants based on sexual orientation and gender identity.

Is anyone exempt from the ordinance with regard to rental property?

Owner occupied housing providers or landlords who own three (3) or fewer units, religious organizations, and any nonprofit institutional organization acting in conjunction with a religious organization are exempt; however, no one is allowed to discriminate in advertising.

PUBLIC ACCOMMODATION

What qualifies as a public accommodation?

Places or businesses offering or holding out to the general public goods, services, privileges, facilities, advantages, and accommodations for the peace, comfort, health, welfare, and safety of the general public, such as hotels or lodging for transient guests; restaurants and facilities selling food for consumption on the premises; gasoline stations; movie theaters, sports arenas, and places of exhibition or entertainment; hospitals; any public facility owned or operated on behalf of the City of Lincoln or facilities supported by public funds. (*42 U.S.C. § 2000a; L.M.C. 11.01.010*)