

ORDINANCE NO. 2017-__

An Ordinance adding Sections XX thru XX, Article XX, Chapter XX of the Code of Ordinances of the City of XX, Mississippi to provide for a nondiscrimination ordinance to protect the general welfare of the residents of XX.

THE PEOPLE OF THE CITY OF XX ORDAIN:

Section 1. Purpose.

The City Council adopts this non-discrimination ordinance for the health, safety, and welfare of the citizens of the City of XX.

Section 2. That Sections XX thru XX of Article XX, Chapter XX of the City of XX Code of Ordinances be adopted to read as follows:

ARTICLE XX. – NON-DISCRIMINATION ORDINANCE

Sec. XX. - Created

- (a) It is the intent of the City of XX that no person be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his or her civil rights or be discriminated against because of their actual or perceived race, color, religion, national origin, sex, age, marital status, physical or mental disability, family status, sexual orientation, or gender identity.
- (b) As to sexual orientation and gender identity, the prohibitions against discrimination as provided for in this ordinance shall not be deemed preempted by federal or state law, but are intended to supplement state and federal civil rights laws prohibiting discrimination in the areas of employment, public accommodations, and housing. Provided, however, this ordinance shall be construed and applied in a manner consistent with First Amendment jurisprudence regarding the freedom of speech and exercise of religion.

Sec. XX. – Definitions.

As used in this chapter, the following words and phrases have the following meanings:

- (a) “Age.” Chronological age.
- (b) “City Manager.” The City Manager of the City of XX or his or her designee.

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- (c) “Discriminate.” To make a decision, offer to make a decision or refrain from making a decision based in whole or in part on actual or perceived race, color, religion, national origin, sex, age, marital status, physical or mental disability, family status, sexual orientation, or gender identity.
- (d) “Educational institution.” A public or private institution or a separate school or department thereof, including an academy, college, elementary or secondary school, extension course, kindergarten, nursery, local school system, or university, or a business, nursing, professional, secretarial, technical, or vocational school. For the purposes of this definition, educational institution includes an agent of an educational institution.
- (e) “Employer.” Any person employing one (1) or more persons.
- (f) “Employment agency.” A person who undertakes to procure employees for an employer or procures opportunities for individuals to be employed by an employer.
- (g) “Family Status.” The state of being in a family.
- (h) “Family.” Includes either of the following:
 - (1) Two or more individuals related by blood within three degrees of consanguinity, marriage, adoption, in a foster care relationship or legal custody relationship.
 - (2) Functional family. A collective number of individuals domiciled together in one dwelling whose relationship is of a permanent and distinctive domestic character, with a demonstrable and recognizable bond characteristic of a cohesive unit, and who are in fact cooking and living in a single non-profit housekeeping unit. However, a “functional family” shall not include:
 - i. Any group of individuals whose domestic relationship is transitory, temporary or resort/seasonal in nature.
 - ii. Any group of individuals whose association is essentially for convenience or economics or for the limited duration of their education, training or a similar determinative period of time.
- (i) “Gender Identity or Expression.” An individual’s appearance, expression, identity or behavior as being either male or female, whether or not that appearance, expression, identity or behavior is different from that which is traditionally associated with the person’s gender assigned at birth as being either female or male.
- (j) “Housing Facility.” Any dwelling unit or facility used or intended or designed to be used as the home, domicile, or residence of one or more persons including, but not limited to, a

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- house, apartment, rooming house, housing cooperative, hotel, motel, tourist home, retirement home, or nursing home.
- (k) “Labor Organization.” An organization of any kind or structure in which employees participate or are members and which exists for the purposes, in whole or part, of dealing with employers concerning the terms and conditions of employment of its participants or members, whether or not such organization is subordinate to or affiliated with a national or international labor organization.
 - (l) “Marital Status.” The stat of being married, never married, divorced, or widowed.
 - (m) “Perceived.” Refers to the perception of the person who acts, and not to the perception of the person for or against whom the action is taken.
 - (n) “Person.” The word “person” shall include any individual, co-partnership, corporation, association, club, joint adventure, estate, trust, and any other group or combination acting as a unit, and the individuals constituting such group or unit.
 - (o) “Physical or Mental Disability.” A determinable physical or mental characteristic resulting from disease, injury, congenital condition of birth, or functional disorder and is unrelated to one’s ability to safely perform the work involved in jobs or positions available to such person for hire or promotion; or unrelated to one’s ability to acquire, rent and maintain property; or unrelated to one’s ability to utilize and benefits from the goods, services, activities, privileges and accommodations of a place of public accommodation. “Physical or Mental Disability” does not include any condition caused by the current illegal use of a controlled substance or the use of alcohol or liquor by an individual.
 - (p) “Place of Public Accommodation.” An educational, governmental, health, entertainment, cultural, recreational, refreshment, transportation, financial institution, business or facility of any kind, whose goods, services, facilities, privileges, advantages or accommodations are extended, offered, sold, or otherwise made available to the public.
 - (q) “Religious Organization.” An organization, church, group, or body of communicants that are organized not for pecuniary profit that regularly gathers for worship and religious purposes, and includes a religious-based private school that is not organized for pecuniary profit. Religious organization includes, for illustration and not limitation: churches, mosques, synagogues and other houses of worship, and any subsidiary organizations; educational institutions affiliated with, controlled, or managed by those houses of worship or with articles of incorporation, bylaws, and other documents stating an intention to inculcate its religious tenants in students; and, faith based organizations that, due to a sense of duty based on particular religious tenets, provide charitable services to the public.
 - (r) “Sexual Orientation.” Male or female homosexuality, heterosexuality or bisexuality, by orientation or practice, whether past or present. This includes emotional, romantic, and/or

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sexual attractions, or the absence thereof, to other people. Sexual orientation also refers to a person's sense of identity based on those attractions, related behaviors, and membership in a community of others who share those attractions.

Sec. XX. – Discriminatory housing practices.

Except as otherwise provided in this ordinance, no person shall:

- (a) Discriminate in leasing, selling or otherwise making available any housing facilities.
- (b) Discriminate in the terms, conditions, maintenance or repair in providing any housing facility.
- (c) Discriminate in providing financing for the purchase, repair or remodeling of any housing facility.
- (d) Discriminate in making referrals, listings or otherwise providing information regarding a housing facility.

Sec. XX. – Discriminatory public accommodation practices.

Except as otherwise provided in this ordinance, no person shall discriminate in making available full and equal access to all goods, services, activities, privileges, and accommodations or any place of public accommodation. However, nothing in this ordinance:

- (a) Permits or requires access to any place of public accommodation for the purpose or intent of engaging in criminal conduct.
- (b) Requires the construction or provision of unisex single user restrooms, changing rooms, locker rooms or shower facilities.

Sec. XX. – Discriminatory employment practices.

Except as otherwise provided in this ordinance:

- (a) No employer shall discriminate in the employment, compensation, work classifications, conditions or terms, promotion or demotion, or termination of employment of any person.
- (b) 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.

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- (c) No employment agency shall discriminate in the procurement or recruitment of any person for possible employment with any employer.
- (d) A person subject to Sec. XX is exempt from this section if race, color, religion, national origin, sex, age, marital status, physical or mental disability, family status, sexual orientation, or gender identity is a bona fide occupational qualification reasonably necessary to the normal operation of the business or enterprise. A person subject to Sec. XX shall have the burden of establishing that the qualification is reasonably necessary to the normal operation of the business.

Sec. XX. – Exceptions.

Notwithstanding anything contained in this ordinance, the following shall not be violations of this ordinance:

- (a) For a religious organization to restrict the occupancy of any of its housing facilities or accommodations which are operated as a direct part of religious activities to persons of the denomination involved or to restrict employment opportunities for officers, religious instructors and clergy to persons of that denomination. It is also permissible for a religious organization to restrict employment opportunities, educational facilities, housing facilities, and homeless shelters or dormitories that are operated as a direct part of its religious activities to persons who are member of or who conform to the moral tenets of that religious organization.
- (b) For the owner or operator of a housing facility or place of public accommodation, devoted entirely to the housing and accommodation of individuals of one sex, to restrict occupancy and use on the basis of sex.
- (c) To limit occupancy in a housing project or to provide public accommodations or employment privileges or assistance to persons of low income, persons over fifty-five (55) years of age or disabled persons.
- (d) To engage in a bona fide effort to establish an affirmative action program to improve opportunities in employment consistent with applicable state or federal law.
- (e) To discriminate based on a person's age when such discrimination is required by state, federal, or local law.
- (f) To refuse to enter a contract with an emancipated minor.
- (g) To refuse to admit to a place of public accommodation serving alcoholic beverages a person under the legal age for purchasing alcoholic beverages.

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- (h) To refuse to admit to persons under eighteen (18) years of age to a business providing entertainment or selling literature that the operator of said business deems unsuitable for minors.
- (i) For an educational institution to limit the use of its facilities to those affiliated with such institution.
- (j) To provide discounts on products or services to students, or on the basis of age.
- (k) To restrict participation in an instructional program, athletic event or on an athletic team that conforms to federal and state laws and regulations.
- (l) This ordinance shall not apply to a private club, or other establishment not in fact open to the public, except to the extent that the goods, services, facilities privileges, advantages or accommodations of the private club or establishment are made available to the customers or patrons of another establishment that is a place of public accommodation or is licensed by the State as amended. This exemption shall not apply to a private club that is otherwise defined as a place of public accommodation in this ordinance. Further, to the extent that the private club permits members to invite guests on the premises, such organization is not exempted as it concerns a member's guest.
- (m) To the employment of an individual by one's family.
- (n) For an employer offering health or pension plans to provide marital or familial status limitations in such plans provided those limitations conform to state and federal laws, rules and regulations.
- (o) To the rental of housing facilities in a building which contains dwelling units for not more than two families living independently of each other if the owner of the building or a member of the owner's family resides in one of the dwelling units, or to the rental of a room or rooms in a single-family dwelling by an individual if the lessor or a member of the lessor's family resides in the dwelling.
- (p) To allow use of facilities or services by persons that may be affiliated with, or otherwise supported by, a religious organization, which may espouse policies or practices inconsistent with the general intent of this ordinance.
- (q) With respect to gender only, to a private educational institution which provides an education to only persons of a particular gender.

Sec. XX. – Human Rights

The purpose of incorporating human rights in this ordinance is to promote principles of diversity, inclusion, and harmony in the City of XX through education, community events, the provision of

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advice to the City Council and Mayor, and through receiving and resolving complaints filed under this ordinance.

- (a) The responsibilities of the city in regards to maintaining human rights include managing records and accounts, developing public education programs, managing citizen complaints, and any other tasks needed. Responsible parties may use the services of clerks, other city government employees or the services of contractors as necessary.
- (b) The City of **XX** shall receive, initiate, investigate, seek to conciliate, hold hearings on, and pass upon complaints alleging violations of this ordinance, including issuing penalties; it shall present an annual report to the Mayor and City Council of its activities; it shall seek to develop public education programs regarding compliance with this ordinance and equal opportunity and treatment of all individuals; and it shall engage in any other necessary action to effectuate its purpose and duties.

Sec. **XX** –Profiling

Public servants, including police officers, shall not exercise differential treatment of individuals in rendering police services based on a person’s appearance, ethnicity, immigration status, age, manner of dress, national origin, physical characteristics, race, religious beliefs, sexual orientation, or gender identity or expression. A public servant, who is a police officer, shall not base reasonable suspicion for an investigative detention, probable cause for an arrest, or any other police action, on a person’s ethnicity, immigration status, age, national origin, race, religious beliefs, sexual orientation, or gender identity or expression.

However, a public servant, who is a police officer, may take into account the reported person’s ethnicity, immigration status, age, national origin, race, religious beliefs, sexual orientation, or gender identity or expression for the purpose of identifying a described individual.

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Solicitation of immigration status by public servants, who are police officers, prohibited; exceptions.

- (a) A public servant, who is a police officer:
 - (1) Shall not solicit information concerning immigration status for the purpose of ascertaining a person’s compliance with federal immigration law; or
 - (2) Shall not solicit information concerning immigration status from a person who is seeking public services, or is a victim or witness of a crime.

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(b) Notwithstanding the prohibitions set forth in subsection (a) of this section, public servants who are police officers, are expressly permitted to engage in the following activities, which shall not constitute a violation of this article

- (1) Solicitation of information concerning immigration status when performing public safety functions while assisting federal law enforcement in the investigation of a criminal offense; or
- (2) Solicitation of information concerning immigration status from the subject of an investigation only when relevant to the investigation or prosecution of a criminal offense, or when processing an arrested person.

Sec. ~~XX-XX~~ Solicitation of immigration status by public servants prohibited; exceptions.

(a) A public servant is prohibited from inquiring into the immigration status of any person, or engaging in activities designed to ascertain the immigration status of any person, while acting within the scope of his or her authority, or employment, as a public servant.

(b) Notwithstanding the prohibitions set forth in subsection (a) of this section, public servants are expressly permitted to engage in the following activities, which shall not constitute a violation of this article:

- (1) Solicitation of information concerning immigration status where specifically required by any federal, state, or city law or program as a condition of eligibility for the service sought; or
- (2) Solicitation of information concerning immigration status for the purpose of completing 1-9 Forms, and, when relevant, in making hiring and payroll withholding decisions, including, but not limited to, completing 1-9 Forms, questioning a person to complete the 1-9 Form, obtaining documents that support the 1-9 Form, and allowing federal authorities to audit an 1-9 Form in accordance with law; or
- (3) Solicitation of information concerning immigration status for a subpoena issued in a criminal proceeding, civil litigation, or an administrative proceeding for the production of city documents or for testimony of a public servant, including where related to immigration issues or other security issues; or
- (4) Solicitation of information concerning immigration status by a public servant who is a police officer, as set forth in Section ~~XX~~.

Sec. [XX](#). – Penalties and Enforcement

- (a) A violation of any provision of this chapter is a civil infraction punishable by a fine of not more than \$500.00 for each day upon which a violation occurs, plus all court costs and the costs of prosecution, and all other penalties permitted in accordance with Mississippi law. These penalties shall be enforceable, if necessary, via an action in municipal court.
- (b) This ordinance may not be construed to limit any other remedies available under state or federal law.

Sec. [XX](#). – Repeal of Former Ordinances.

All former ordinances or parts of ordinances conflicting or inconsistent with the provisions of this ordinance are repealed.

Section [XX](#). This ordinance takes effect thirty (30) days from the date of adoption.