

**ORDINANCE NO. 6093, AS AMENDED
PROPOSED SUBSTITUTE**

Introduced by Council Member Ottersten at February 6, 2019 Work Session

**AN ORDINANCE AMENDING FGC CHAPTER 1 BY ADDING
SECTIONS 1-21 through 1-28 ADDRESSING EQUAL RIGHTS**

WHEREAS, discrimination based on race, color, age, religion, sex, familial status, disability, sexual orientation, gender identity, gender expression, ethnicity, or national origin poses a threat to the health, safety, and general welfare of the citizens of the City of Fairbanks; and

WHEREAS, to help eliminate such discrimination, the City adopts the following ordinance that creates a private right of action for persons who are victims of discrimination.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF FAIRBANKS, ALASKA, as follows:

Section 1. FGC Chapter 1, General Provisions, is amended by adding Sections 1-21 through 1-28.

FGC Sec. 1-21. Policy.

It is the policy of the City of Fairbanks to eliminate unlawful discrimination based on race, color, age, religion, sex, familial status, disability, sexual orientation, gender identity, gender expression, ethnicity, or national origin. Such discrimination poses a threat to the health, safety, and general welfare of the citizens of the City of Fairbanks. The terms “race, color, age, religion, sex, familial status, disability, sexual orientation, gender identity, gender expression, ethnicity, or national origin,” rather than being repeated throughout the following sections, will be referred to by the shortened “race, color, age, etc.”

FGC Sec. 1-22. Discrimination in employment.

(a) It shall be a prohibited discriminatory employment practice:

- (1) For an employer to fail or refuse to hire, to discharge, bar from employment, or otherwise to discriminate against any individual with respect to compensation or the terms, conditions, or privileges of employment because of race, color, age, etc.;

- (2) For a labor organization to exclude or expel from membership, or otherwise to discriminate against any applicant or member, because of race, color, age, etc. ~~of any applicant or member;~~
- (3) For an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against any individual because of race, color, age, etc. of said individual;
- (4) For an employer, labor organization, or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement, or publication, or to make any inquiry in connection with prospective employment, which expresses directly or indirectly a preference, limitation, specification, or discrimination because of race, color, age, etc., unless based upon a bona fide occupational qualification;
- (5) For an academic, professional, or vocational school to exclude or expel from enrollment, or otherwise to discriminate against any applicant or student, because of ~~the~~ ir student's race, color, age, etc.;
- (6) For an academic, professional, or vocational school to print or circulate or cause to be printed or circulated, a statement, advertisement or publication, or to use any form of application for admission to said school, or to make any inquiry in connection with prospective enrollment in said school, which expresses directly or indirectly a preference, limitation, specification, or discrimination because of race, color, age, etc.;

(b) Nothing in this ~~chapter~~ **section** shall be interpreted to require an employer, employment agency, labor organization, or joint labor-management committee, subject to this ordinance, to grant or accord preferential treatment to an individual or group because of the race, color, age, etc. ~~religion, sexual orientation, gender identity, gender expression, familial status, disability, or national origin~~ of such individual or group because of an imbalance that may exist with respect to the total number or percentage of persons of any race, color, age, etc.: ~~religion, sexual orientation, gender identity, gender expression, familial status, disability, or national origin~~

- (1) employed by an employer,
- (2) referred or classified for employment by an employment agency or labor organization,
- (3) admitted to membership or classified by a labor organization, or
- (4) admitted to or employed in an apprenticeship or other training program,

as compared with the total number or percentage of persons of such race, color, age, etc. ~~religion, sexual orientation, gender identity, gender expression, familial status, disability, or national origin~~ in this community or in the available work force in this community.

FGC Sec. 1-23. Discrimination in the provision of housing or realty.

(a) It shall be a prohibited housing or realty practice:

- (1) For a person, including a banking, money lending, credit securing, or other financial institution, or an officer, agent, or employee thereof, to discriminate against an individual because of race, color, age, etc., with respect to the granting or withholding of credit or financial assistance, or modifying of rates, terms, conditions, privileges, or other provisions of credit or financial assistance, in connection with the transfer or prospective transfer of any interest whatsoever in realty, or in connection with the construction, repair, improvement, or rehabilitation of realty;
- (2) For a real estate broker, salesperson, or agent, or an employee thereof, or any other person seeking financial gain thereby, directly or indirectly to induce or solicit, or attempt to induce or solicit, the transfer of any interest whatsoever in realty, by making or distributing, or causing to be made or distributed, a statement or representation concerning the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, age, etc.;
- (3) For a person to refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate the sale or rental of, or otherwise make unavailable or deny a dwelling to a person because of race, color, age, etc.;
- (4) For a person to discriminate against another person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, age, etc.;
- (5) For a person to make, print, or publish, or cause to be made, printed, or published a notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, age, etc., or an intention to make any such preference, limitation, or discrimination;
- (6) For a person to represent to another person because of race, color, age, etc. that a dwelling is not available for inspection, sale, or rental when such dwelling is, in fact, available for such purpose; and
- (7) For a person to deny another person access to or membership or participation in a multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against another person in the terms or conditions of such access, membership or participation on account of race, color, age, etc.

(b) For purposes of this section, with respect to persons with disabilities, the term prohibited discriminatory practices includes:

- (1) Refusal to permit, at the expense of a person with a disability, or another person on behalf of a person with a disability, reasonable modification of existing premises occupied by or to be occupied by the person with disabilities if the modification may be necessary or desirable to afford the person with a disability full enjoyment of the premises, except that, in the case of a rental unit the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted; and
- (2) A refusal to make reasonable accommodations in rules, policies, practices, or services, when accommodation may be necessary to afford the person an equal opportunity to use and enjoy a dwelling.

FGC Sec. 1-24. Discrimination in public accommodations.

(a) It shall be a prohibited discriminatory public accommodation practice for any person, including any owner, lessee, manager, proprietor, custodian, agent, or employee of a place of public accommodation to discriminate against any individual because of race, color, age, etc., with respect to the terms, conditions, and privileges of access to or with respect to the uses, services, and enjoyment of a place of public accommodation.

(b) It shall be a prohibited discriminatory public accommodation practice for any person to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement that states or implies:

- (1) that any of the services, goods, facilities, advantages, or privileges of the public accommodation will be refused, withheld from, or denied to a person of a certain race, color, age, etc.; or
- (2) that the patronage of a person belonging to a particular race, color, age, etc. is unwelcome, or not desired or solicited.

(c) Notwithstanding (a) or (b) of this section, a physical fitness facility may limit public accommodation to a single gender to protect the privacy interests of its users. Public accommodation may be limited under this subsection only to those rooms in the facility that are primarily used for weight loss, aerobic, and other exercises, or for resistance weight training. Public accommodation may not be limited under this subsection to rooms in the facility primarily used for other purposes, including conference rooms, dining rooms, and premises licensed under AS 04.11. This subsection does not apply to swimming pools or golf courses.

FGC Sec. 1-25. Lawful practices.

(a) Nothing in **SEC. 1-22 OR SEC. 1-23** ~~this chapter~~ shall be construed to preempt federal law with respect to a federally recognized Tribe granting preference in employment or housing to Tribal members.

(b) The provisions of Sec. 1-23 shall not apply to rental of a room or rooms in a dwelling unit actually occupied by the owner or lessee as the owner's or lessee's residence, or actually occupied by a member of the owner's or lessee's immediate family as the family member's residence. For purposes of this section, "immediate family member" means the owner's or lessee's spouse, minor child, dependent, or a regular member of the owner's or lessee's household, provided that the owner or lessee rents not more than three rooms within the residence.

(c) The provisions of Sec. 1-23 ~~and this Section~~ regarding age and familial status shall not apply with respect to housing for older persons.

(d) Nothing in **SEC. 1-23** ~~this chapter~~ prohibits a religious organization, ~~association, or society~~, or a nonprofit institution or organization operated, supervised, or controlled by a religious organization, ~~association, or society~~, from limiting the sale, rental, or occupancy of dwellings it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such a person~~s~~. Neither shall anything in **SEC. 1-23** ~~this chapter~~ prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for club purposes and not for profit, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(e) **SEC. 1-22** ~~This chapter~~ shall not apply with respect to the employment of individuals whose positions would fall within the "ministerial exemption" as described by the United States Supreme Court in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171 (2012).

(f) Notwithstanding the prohibition against employment discrimination based on familial status under FGC Sec. 50-469:

- (1) an employer may provide greater health and retirement benefits to employees who have a spouse or dependent children than are provided to other employees;
- (2) a labor organization may negotiate greater health and retirement benefits for employees of an employer who have a spouse or dependent children than are provided to other employees of the employer.

(g) Nothing in **SEC. 1-23 OR SEC. 1-24** ~~this chapter~~ shall prohibit the establishment of a same-sex shelter or residential facility for the care and lodging of persons in need of special medical, rehabilitative, social, or psychological support, including, but not limited to: emergency shelters for victims of domestic violence and sexual assault; half-way houses; drug treatment centers; detoxification facilities; and shelters for the homeless, provided that such establishment does not discriminate based on race, color, age, etc.

(h) It shall not be an unlawful practice for any financial institution or other commercial

institution extending credit from engaging in any practice permitted by federal statute.

FGC Sec. 1-26. Unlawful intimidation or retaliation.

It shall be a prohibited discriminatory practice for a person, directly or indirectly, to discriminate, coerce, intimidate, threaten, interfere with, or retaliate against a person because the person has:

- (1) opposed any practice made unlawful by SEC. 1-22, SEC. 1-23, OR SEC. 1-24 ~~this chapter~~; or
- (2) exercised the person's rights or encouraged another to exercise their rights under SEC. 1-22, SEC. 1-23, OR SEC. 1-24 ~~this chapter~~.

FGC Sec. 1-27. Cause of action.

(a) A person aggrieved by a discriminatory practice prohibited under SEC. 1-22, SEC. 1-23, SEC. 1-24, OR SEC. 1-26 ~~this chapter~~ may, within 365 days of any violation of SEC. 1-22, SEC. 1-23, SEC. 1-24, OR SEC. 1-26 ~~this chapter~~, petition in court to enjoin SUCH a violation of ~~this chapter~~ or seek remedy for the a violation.

(b) Remedy may include such relief as the court deems just and proper, and may include one or more of the following:

- (1) requiring training concerning discriminatory practices;
- (2) an accommodation for a person with a disability;
- (3) removal of, or changes to, a personnel record;
- (4) posting of signs;
- (5) back pay;
- (6) the hiring, reinstatement, or upgrading of an employee with or without back pay;
- (7) the payment of front pay for a period of not more than one year if hiring, reinstatement, or upgrading of an employee is inappropriate because a vacancy does not exist, the employer's discriminatory practice rendered the employee incapable of returning to work, or the relationship between the employer and employee has so deteriorated as to make working conditions intolerable;
- (8) restoration of membership in a labor organization;
- (9) admission to or participation in an apprenticeship training program, on-the-job training program, or other retraining program;
- (10) restoration of seniority;
- (11) the sale, lease, or rental of the housing accommodation to the aggrieved person if it is still available, or the sale, lease, or rental of a like accommodation owned by the respondent if one is still available, or the sale, lease, or rental of the next vacancy in a like accommodation, owned by the respondent; and

(12) actual damages incurred as a result of the unlawful practice or violation.

(c) An order for back pay or front pay under (b)(5)-(7) of this section must be reduced by the amount the employee could have earned or could earn by making reasonably diligent efforts to obtain similar employment.

FGC Sec. 1-28. Definitions.

For purposes of **SECTIONS 1-21 THROUGH 1-27** ~~this chapter:~~

Disability means, with respect to a person:

- (1) a physical or mental impairment which substantially limits one or more of a person's major life activities;
- (2) a record of having such impairment; or
- (3) being regarded as having such an impairment. "Disability" does not include current, illegal use of or addiction to a controlled substance in violation of applicable state law.
- (4) ~~that~~ ~~However, a person may be considered to be disabled if that person:~~
 - (A) has successfully completed a supervised drug rehabilitation program, and
 - (i) is no longer engaging in the illegal use of a controlled substance;
 - (ii) is not currently addicted to a controlled substance; or
 - (iii) has otherwise been rehabilitated successfully and is no longer engaging in use of a controlled substance and is not currently addicted;
 - (B) is participating in a supervised rehabilitation program and is no longer engaging in illegal use of controlled substances; or
 - (C) is erroneously regarded as currently illegally using, or being addicted to, a controlled substance.

Employer includes any person who employs **four** ~~15~~ or more persons exclusive of that person's parents, spouse, or children.

Employment agency includes any person undertaking for compensation to procure opportunities to work or to procure, recruit, refer, or place employees.

Familial status means marital status, changes in marital status, pregnancy, or parenthood.

Financial institution means bank, banking organization, mortgage company, insurance company, investment company, or other lender to whom application is made for financial assistance for the purchase, lease, acquisition, construction, rehabilitation, repair, maintenance, or improvement of real property, or an individual employed by or acting on behalf of or as agent of any of these.

Gender identity means a person's gender-related self-identity appearance, expression, or behavior, regardless of the person's assigned sex at birth. A person's gender identity may be shown by evidence of medical history, care or treatment of the gender identity, consistent and uniform assertion of the gender identity, or other evidence that the gender identity is sincerely held, core to a person's gender-related self-identity, and not being asserted for an improper purpose.

Gender expression means the external appearance of one's gender identity, usually expressed through behavior, clothing, haircut, or voice, and which may or may not conform to socially defined behaviors and characteristics typically associated with being either masculine or feminine.

Housing for older persons means housing:

- (1) provided under any state or federal program that the Secretary of the United States Department of Housing and Urban Development has determined is specifically designed and operated to assist elderly persons;
- (2) intended for, and solely occupied by, persons 55 years of age or older; or
- (3) intended and operated for occupancy by at least one person 55 years of age or older per unit.

Individual means one or more individuals.

Labor organization includes any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or for other mutual aid or protection in relation to employment.

National origin includes ancestry.

Person includes one or more individuals, partnerships, associations, unincorporated organizations, corporations, mutual companies, joint-stock companies, legal representatives, trusts, trustees, trustees in bankruptcy, and receivers.

Place of public accommodation means all places or businesses offering or holding out to the general public services or facilities for the comfort, health and safety of the general public, including public places providing food, shelter, recreation, and amusement.

Race, color, age, etc. when used includes the terms: race, color, age, religion, sex, familial status, disability, sexual orientation, gender identity, gender expression, **ethnicity**, and national origin.

Sexual orientation means actual or perceived heterosexuality, homosexuality, bisexuality, or asexuality.

Section 2. That the effective date of this Ordinance is March, _____, 2019.

JIM MATHERLY, Mayor

AYES:
NAYS:
ABSENT:
ADOPTED:

ATTEST:

APPROVED AS TO FORM:

D. Danyielle Snider, CMC, City Clerk

Paul J. Ewers, City Attorney