

AMERICAN FORK CITY ORDINANCE NO. _____

AN ORDINANCE ENACTING A NEW CHAPTER OF THE AMERICAN FORK MUNICIPAL CODE RELATING TO UNLAWFUL DISCRIMINATION IN HOUSING PRACTICES BASED ON SEXUAL ORIENTATION OR GENDER IDENTITY.

WHEREAS, the City of American Fork is comprised of diverse and varied groups, communities, and individuals;

WHEREAS, American Fork City values this diversity;

WHEREAS, the Utah Fair Housing Act, Utah Code § 57-21-1 *et seq.*, addresses housing-related discrimination based on race, ethnicity, color, religion, national origin, familial status, income, age, gender, and disability, but does not address housing-related discrimination based on sexual orientation or gender identity;

WHEREAS, the American Fork City Council has concluded that discrimination based on sexual orientation and gender identity are among the forms of discrimination that adversely affect the general welfare of the City and the vitality of its neighborhoods; and

WHEREAS, Utah Code § 10-8-84(1) grants the City of American Fork the power “to provide for the safety and preserve the health, and promote the prosperity, improve the morals, peace and good order, comfort, and convenience of the city and its inhabitants.”

NOW THEREFORE BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF AMERICAN FORK CITY, UTAH, AS FOLLOWS:

Title of Ordinance

The provisions codified in this chapter shall be known and may be referred to as the “Housing Non-Discrimination Ordinance.”

Purpose

Every individual in the city has the right to seek housing. Discriminatory housing practices are detrimental because they impede the social and economic progress of the city by preventing all of the city's citizens from contributing to or fully participating in the cultural, spiritual, social and commercial life of the community, which is essential to the growth and vitality of the city's neighborhoods and businesses.

The Utah Fair Housing Act, Utah Code § 57-21-1 *et seq.*, addresses housing-related discrimination based on race, color, religion, sex, national origin, familial status, source of income and disability, but does not address discrimination based on sexual orientation or gender identity.

The City has found that discrimination in housing on the basis of sexual orientation and

gender identity must be addressed. The denial or deprivation of access to housing because of an individual's sexual orientation or gender identity is detrimental to the health, safety, and welfare of the city's citizens and damages the city's economic well being. The purpose of this chapter is to provide a clear and comprehensive mandate for the prevention and elimination of discrimination in housing in the city against individuals based upon sexual orientation or gender identity and this chapter shall be liberally construed to achieve that purpose.

Administration

The Mayor is responsible for administering and implementing this chapter.

No Private Right of Action; No Special Rights

This chapter does not create a private cause of action, nor does it create any right or remedy that is the same or substantially equivalent to the remedies provided under federal or state law. This chapter does not create any special rights or privileges which would not be available to all of the City's citizens because every person has a sexual orientation and a gender identity.

Nothing in this chapter shall be construed to authorize a tenant to harass his landlord, co-tenants, or neighbors, or to provide a tenant with an affirmative defense against claims of harassment arising under the Utah Fair Housing Act or Title VIII of the Civil Rights Act of 1968.

Severability

This chapter shall not be construed to conflict with the Utah Fair Housing Act, Title VIII of the Civil Rights Act of 1968, or any regulations issued by state or federal agencies pursuant to these laws.

If any section, sentence, paragraph, term definition or provision of this chapter is for any reason determined to be illegal, invalid, superseded by other authority or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such portion shall be deemed a separate, distinct, and independent provision and such determination shall have no effect on the validity of any other section, sentence, paragraph, term, definition or provision of this chapter, all of which will remain in full force and effect.

Definitions

ADMINISTRATOR means the person designated by the Mayor to receive, investigate, and conciliate complaints under this chapter and includes the Administrator's designated representatives.

COMPLAINANT means a person, including the administrator, who files a complaint under this chapter.

CONCILIATION means the attempted resolution of issues raised in a complaint filed under this chapter, or raised in the investigation of the complaint, through informal negotiations involving the Complainant, the Respondent, and the Administrator.

CONCILIATION AGREEMENT means a written agreement setting forth the resolution of issues by conciliation under this chapter.

DISCRIMINATION means 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 sexual orientation or gender identity or because of a person's association with any such person. Discrimination shall not be interpreted to require or to grant or accord preferential treatment to any person because of that person's sexual orientation or gender identity.

DWELLING means any building or structure, or a portion of a building or structure, occupied as, or designed or intended for occupancy as, a residence of one or more families inside the City and vacant land that is offered for sale or lease for the construction or location of a dwelling inside the City.

GENDER IDENTITY means a person's actual or perceived gender identity, appearance, mannerisms, or other characteristics of an individual with or without regard to the person's sex at birth.

PERSON means one or more individuals, partnerships, associations, corporations, legal representatives, trusts or trustees, receivers and the City.

REAL ESTATE BROKER OR SALESPERSON means a principal real estate broker, an associate real estate broker, or a real estate sales agent as those terms are defined in Utah Code Ann. §61-2-2 or any successor provision of Utah law.

RELIGIOUS ORGANIZATION means a religious corporation, association, educational institution, society, trust, or any entity or association which is a wholly owned or controlled subsidiary or agency of any religious corporation, association, society, trust or corporation sole.

RENT means to lease, sublease, let, or otherwise grant for a consideration the right to occupy premises not owned by the occupant.

RESIDENTIAL REAL ESTATE TRANSACTION means the making or purchasing of loans or providing other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling; or secured by residential real estate; or selling, brokering, or appraising residential real property in the City.

RESPONDENT means a person identified as having committed an unlawful practice under this chapter.

SEXUAL ORIENTATION means a person's actual or perceived orientation as heterosexual, homosexual, or bisexual.

UNLAWFUL PRACTICE means a discriminatory act or practice relating to housing that is prohibited under this chapter.

Exemptions

This chapter does not apply to:

- A. A temporary or permanent residential facility operated by a nonprofit organization;
- B. A charitable organization;
- C. A religious organization, association, or society, including any dormitory operated by a public or private educational institution if the discrimination is based on sexual orientation or gender identity for reasons of personal modesty or privacy or in the furtherance of a religious organization's religious beliefs;
- D. The United States Government, or any of its departments or agencies; or
- E. The State of Utah, or any of its departments, agencies, or political subdivisions other than the City.
- F. This chapter does not prohibit or restrict a religious organization or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization from limiting the sale, rental, or occupancy of dwellings it owns or operates for primarily noncommercial purposes to persons of the same religion, or from giving preference to such persons.
- G. This chapter does not prohibit distinctions based on a person's inability or failure to fulfill the terms and conditions, including financial obligations, of a lease, rental agreement, contract of purchase or sale, mortgage, trust deed, or other financing agreement.

Unlawful Housing Practices

It is a discriminatory housing practice to do any of the following:

- A. Refuse to sell or rent after the making of a bona fide offer, or refuse to negotiate for the sale or rental, or otherwise deny or make unavailable any dwelling from any person because of the person's sexual orientation or gender identity.

- B. Discriminate against any person in the terms, conditions, or privileges of the sale or rental of any dwelling or in providing facilities or services in connection with the dwelling because of the person's sexual orientation or gender identity.
- C. Represent to any person that any dwelling is not available for inspection, sale, or rental when in fact the dwelling is available based on a person's sexual orientation or gender identity.
- D. Make a representation orally or in writing or make, print, circulate, publish, post, or cause to be made, printed, circulated, published, or posted any notice, statement, or advertisement, or to use any application form for the sale or rental of a dwelling, that directly or indirectly expresses any preference, limitation, or discrimination based on sexual orientation or gender identity.
- E. Induce or attempt to induce, for profit, any person to buy, sell, or rent any dwelling by making representations about the entry or prospective entry into the neighborhood of persons of a particular sexual orientation or gender identity.
- F. Engage in any discriminatory housing practices because of sexual orientation or gender identity based upon a person's association with another person.
- G. It is unlawful for any person to discriminate against, harass, threaten, harm, damage, or otherwise penalize another person for opposing an unlawful practice, for filing a complaint, or for testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing under this chapter.
- H. It is a discriminatory housing practice for a real estate broker or salesperson, based on a person's sexual orientation or gender identity, to:
 - 1. Discriminate against any person in making available a residential real estate transaction, or in the terms or conditions of the transaction, inside the City, because of a person's sexual orientation or gender identity;
 - 2. Deny any person access to, or membership or participation in, any multiple-living service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings inside the City or to discriminate against any person in the terms or conditions of access, membership, or participation in the organization, service, or facility inside the City because of a person's sexual orientation or gender identity; or
 - 3. Engage in any discriminatory housing practices inside the City because of sexual orientation or gender identity based upon a person's association with another person.
- I. Exceptions. The provisions in this chapter do not apply to the following:

1. The sale or rental of any single-family dwelling, if the owner
 - (i) does not own an interest in or title to four or more single-family dwellings held for lease or sale at one time located inside the City;
 - (ii) has not sold two or more single-family dwellings inside the City in which the owner did not reside in the dwelling within the 24-month period preceding the sale or rental of the dwelling;
 - (iii) does not use the services or facilities of any real estate broker, agent, or salesperson, or of any other person in the business of selling or renting dwellings, in connection with the sale or rental of the dwelling inside the City.
2. The rental of a dwelling that is occupied or intended to be occupied by no more than four families living independently of each other, when the owner actually maintains and occupies part of the dwelling as a residence.
3. Nothing in this section prohibits conduct against a person because of the person's conviction by a court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance under state or federal law, or any other criminal activity.

Procedures for Filing a Complaint

- A. Any person who claims to have been injured by an unlawful housing practice subject to the City's jurisdiction under this chapter may file a complaint with the Administrator. A complaint may also be filed by the Administrator if the Administrator has reasonable cause to believe that a person has committed an unlawful housing practice. A complaint must be filed within 120 calendar days after an alleged unlawful housing practice has occurred.
- B. A complaint must be in writing on a form provided by the Administrator, made under oath or affirmation, and contain the following information:
 1. The Complainant's name, address, and signature;
 2. The date the alleged unlawful housing practice occurred;
 3. A statement of the facts upon which the allegation of an unlawful housing practice are based; and
 4. The Respondent's name and address.
- C. Promptly after the filing of a complaint, the Administrator shall:

1. Provide the Respondent named in the complaint written notice that a complaint alleging the commission of an unlawful housing practice has been filed against the Respondent.
 2. Furnish a copy of the complaint to the Respondent; and
 3. Advise the Respondent of the Respondent's procedural rights and obligations, including the right to file a written, signed, and verified informal answer to the complaint within 15 days after service of notice of the complaint.
- D. A Respondent may file an answer to the complaint within 15 days of service of notice of the complaint. The answer must be in writing, made under oath or affirmation, and contain the following information:
1. The Respondent's name, address, telephone number, and signature of the Respondent or the Respondent's attorney, if any; and
 2. A concise statement of facts in response to the allegations in the complaint, including facts of any defense or exception.

Investigation

- A. Upon the filing of a complaint, the Administrator shall commence an investigation to determine the facts behind the complaint and whether there is reasonable cause to believe the Respondent committed an unlawful housing practice, except that no investigation may commence if, after reviewing the allegations of the complaint, the Administrator determines that the complaint does not come within the scope of this chapter. Upon determining that a particular complaint does not come within the scope of this chapter, the Administrator shall dismiss the complaint, notify the Complainant and Respondent and take no further action.
- B. In connection with any investigation of a complaint filed under this chapter, the Administrator shall seek the voluntary cooperation of any person to:
1. Obtain access to premises, records, documents, individuals and any other possible source of relevant information;
 2. Examine, record, and copy necessary materials; and
 3. Take and record testimony or statements of any person reasonably necessary for the furtherance of the investigation.

- C. The Administrator may request the City Recorder to issue an executive branch subpoena or subpoena duces tecum to compel the attendance of a witness or the production of relevant materials or documents.
- D. The Administrator may dismiss a complaint during the investigation and prior to referral to the City Attorney if the Administrator determines that:
 - 1. The complaint was not filed within the required time period;
 - 2. The location of the alleged unlawful housing practice is not within the City's jurisdiction;
 - 3. The alleged unlawful housing practice is not a violation of this chapter;
 - 4. The Complainant refuses to cooperate with the Administrator in the investigation of the complaint or enforcement of an executed conciliation agreement;
 - 5. The Complainant cannot be located after the Administrator has performed a reasonable search; or
 - 6. A conciliation agreement has been executed by the Complainant and Respondent.

Conciliation

- A. During or after the investigation, but subsequent to the mailing of the notice of the complaint to the Respondent, the Administrator shall, if the Respondent appears to have committed an unlawful housing practice, attempt to conciliate the complaint.
- B. In conciliating a complaint, the Administrator shall try to achieve a just resolution and obtain assurances that the Respondent will satisfactorily remedy any violation of the Complainant's rights and take action to ensure the elimination of both present and future unlawful housing practices.
- C. A conciliation agreement may include:
 - 1. Sensitivity training for the Respondent and/or the Respondent's employees;
 - 2. The Respondent's agreement to adopt and pursue a policy of non-discrimination in housing practices; and
 - 3. The Respondent's agreement to not engage in discriminatory practices in the future.

- D. A conciliation agreement executed under this section must be in writing in a form approved by the City Attorney and must be signed and verified by the Respondent and the Complainant, subject to approval of the Administrator who shall indicate approval by signing the agreement.
- E. If a Respondent voluntarily enters into a conciliation agreement, the Administrator shall immediately dismiss the complaint.

Disposition of a Complaint

- A. If, upon completion of an investigation of a complaint, the Administrator determines that an unlawful housing practice has occurred and is unable to secure an acceptable conciliation agreement from the Respondent, then the Administrator shall refer the case to the City Attorney. The Administrator shall refer the entire file to the City Attorney, who shall determine how best to pursue further action, if any, on the complaint.
- B. If the City Attorney determines that cause exists to find that an unlawful housing practice occurred and the facts are sufficient to warrant the initiation of an action, then the City Attorney shall provide written notification to the Respondent and the Complainant that an action to enforce this chapter may be initiated in court.
- C. If the City Attorney determines that there is not sufficient cause that an unlawful housing practice occurred or that the facts are insufficient to warrant the initiation of an action in court, the City Attorney shall provide written notification to the Respondent and the Complainant and notify the Administrator who shall then dismiss the complaint.

Offenses and Penalties

An offense committed under this chapter by a Respondent owning twenty (20) or fewer dwellings is punishable by a civil fine of not more than \$500.00. An offense committed under this chapter by a Respondent owning twenty-one (21) or more dwellings or by a real estate broker or salesperson is punishable by a civil fine of not more than \$1,000.00.

This ordinance shall take effect immediately upon its passage and publication as prescribed by law.

Passed by the American Fork City Council on this _____ day of _____, _____.

MAYOR

J. H. HADFIELD
Mayor of American Fork

ATTEST:

RICHARD COLBORN
City Recorder