

Submitted by: ASSEMBLY MEMBER EVANS
Assembly Member Flynn
Reviewed by: Assembly Counsel
For reading: September 15, 2015

ANCHORAGE, ALASKA
AO No. 2015-96(S-1)

AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY AMENDING TITLE 5 OF THE ANCHORAGE MUNICIPAL CODE REGARDING EQUAL RIGHTS AND THE ANCHORAGE EQUAL RIGHTS COMMISSION (AERC) TO ADD SEXUAL ORIENTATION AND GENDER IDENTITY TO THE GROUNDS OF DISCRIMINATION PROHIBITED BY THE TITLE, TO EXPAND AND CLARIFY THE RELIGIOUS EXEMPTIONS, AND TO MODIFY THE LAWYER’S ROLE AND AN EVIDENTIARY RULE AT AERC HEARINGS.

THE ANCHORAGE ASSEMBLY ORDAINS:

Section 1. Anchorage Municipal Code section 5.10.010 is hereby amended to read as follows:

5.10.010 Policy.

The public policy of the municipality is declared to be equal opportunity for all persons. The assembly finds that invidious discrimination in the sale or rental of real property, financing practices, employment practices, public accommodations, educational institutions, and practices of the municipality, based upon race, color, sex, sexual orientation, gender identity, religion, national origin, marital status, age, or physical or mental disability, adversely affects the welfare of the community. Accordingly, such discrimination is prohibited.

It is the express intent of this title to guarantee fair and equal treatment under law to all people of the Municipality, consistent with federal and state constitutional freedoms and laws, including freedom of expression, freedom of association and the free exercise of religion.

(AO No. 92-116(S); AO No. 93-99; AO No. 93-149, § 1, 10-15-93; Ord. No. 2002-163, § 1, 1-7-03)

Section 2. Anchorage Municipal Code section 5.20.010, Definitions, is hereby amended to read as follows (*the remainder of the section is not affected and therefore not set out*):

5.20.010 Definitions.

The following words, terms and phrases, when used in this title, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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3 *Blockbusting* means any effort, for profit, to induce or attempt to induce a
4 person to sell or rent a dwelling based on representations that a change has
5 occurred, or will or may occur regarding the entry into a block, neighborhood
6 or area, in which the real property is located, of a person or persons of a
7 particular race, color, sex, sexual orientation, gender identity, religion,
8 national origin, marital status, age, or physical or mental disability, including
9 but not limited to lower property values, an increase in criminal or antisocial
10 behavior or decline in the quality of the schools or other facilities.

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13 *Discrimination* means any direct or indirect act or practice of exclusion,
14 distinction, restriction, segregation, limitation, refusal or denial or any other
15 act or practice of differentiation or preference in the treatment of a person
16 because of actual or perceived race, color, religion, national origin, age,
17 sex, sexual orientation, gender identity, marital status, or physical or mental
18 disability, or the aiding, abetting, inciting, coercing or compelling thereof.

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21 *Gender Identity* means a person's gender-related self-identity, as expressed
22 in appearance [~~expression~~] or behavior, regardless of the person's
23 assigned sex at birth. A person's gender identity may be established by
24 evidence of medical history, care or treatment of the gender identity,
25 consistent and uniform assertion of the gender identity, or other
26 evidence that the gender identity is sincerely held, core to a person's
27 gender-related self-identity, and not being asserted for an improper
28 purpose.

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

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33 (AO No. 92-116(S); AO No. 93-99; AO No. 93-149, § 2, 10-15-93; AO No. 96-99, §
34 1, 10-22-96; Ord. No. 2002-163, § 2, 1-7-03)

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36 **Section 3.** Anchorage Municipal Code section 5.20.020 is hereby amended to
37 read as follows (*the remainder of the section is not affected and therefore not set*
38 *out*):

39
40 **5.20.020 Unlawful practices in the sale, rental or use of real**
41 **property.**

42
43 A. With the exception of those conditions described in section 5.25.030A,
44 as "lawful practices", [i]it is unlawful for the owner, lessor, manager,
45 agent, brokerage service, or other person having the right to sell,

1 lease, rent, advertise, or an owner's association having the powers of
2 governance and operation of real property to:

- 3
- 4 1. Refuse to sell, lease or rent, or to otherwise make unavailable,
5 the real property to a person because of race, color, sex, sexual
6 orientation, gender identity, religion, national origin, marital
7 status, age, or physical or mental disability.
- 8
- 9 2. Discriminate against a person because of race, color,
10 sex, sexual orientation, gender identity, religion, national origin,
11 marital status, age, or physical or mental disability in a term,
12 condition or privilege relating to the use, sale, lease or rental of
13 real property.
- 14
- 15 3. Make a written or oral inquiry or record of the race, color,
16 sex, sexual orientation, gender identity, religion, national origin,
17 marital status, age, or physical or mental disability of a person
18 seeking to buy, lease or rent real property.
- 19
- 20 4. Offer, solicit, accept, use or retain a listing of real property with
21 the understanding that a person may be discriminated against
22 in a real estate transaction or in the furnishing of facilities or
23 sources in connection therewith because of a person's race,
24 color, sex, sexual orientation, gender identity, religion, national
25 origin, marital status, age, or physical or mental disability.
- 26
- 27 5. Represent to a person that real property is not available for
28 inspection, sale, rental or lease when in fact it is available, or
29 refuse a person the right to inspect real property, because of
30 the race, color, sex, sexual orientation, gender identity, religion,
31 national origin, marital status, age, or physical or mental
32 disability of that person or because of any person associated
33 with that person.
- 34
- 35 6. Engage in blockbusting for profit.
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- 37 7. Circulate, issue or display, make, print or publish, or cause to
38 be made or displayed, printed or published, any
39 communication, sign, notice, statement or advertisement with
40 respect to the use, sale, lease or rental of real property that
41 indicates any preference, limitation, specification or
42 discrimination based on race, color, sex, sexual orientation,
43 gender identity, religion, national origin, marital status, age, or
44 physical or mental disability.
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2 (CAC 8.36.090; AO No. 93-149, § 2, 10-15-93; AO No. 2002-163, § 3, 1-7-03; AO
3 No. 2008-16, § 1, 3-18-08)

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5 **Section 4.** Anchorage Municipal Code section 5.20.030 is hereby amended to
6 read as follows (*the remainder of the section is not affected and therefore not set*
7 *out*):

8
9 **5.20.030 Unlawful financing practices.**

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11 A. It is unlawful for an insurance company, a financial institution or other
12 commercial institution extending secured or unsecured credit, upon
13 receiving an application for financial assistance or credit for the
14 acquisition, construction, rehabilitation, repair or maintenance of a
15 housing accommodation or other property or services, or the
16 acquisition or improvement of unimproved property, or upon receiving
17 an application for any sort of loan of money, or upon receiving an
18 application for insurance, to permit one of its officials or employees
19 during the execution of his or her duties to:

20
21 1. Discriminate against the applicant because of race, color,
22 sex, sexual orientation, gender identity, religion, national origin,
23 marital status, age, or physical or mental disability, in a term,
24 condition or privilege relating to the obtainment or use of the
25 institution's financial assistance, insurance or credit.

26
27 2. Make or cause to be made a written or oral inquiry or record of
28 the race, color, sex, sexual orientation, gender identity, religion,
29 national origin, marital status, age, or physical or mental
30 disability, of a person seeking the institution's financial
31 assistance, insurance or credit unless the inquiry is for the
32 purpose of ascertaining the applicant's creditworthiness or
33 insurability.

34
35 3. Refuse to extend credit, issue a credit card, insure or make a
36 loan to a single, divorced, pregnant or married person who is
37 otherwise creditworthy, if so requested by the person, or to
38 refuse to extend credit, issue a credit card, insure or make a
39 loan to a creditworthy person based on that person's sexual
40 orientation or gender identity.

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42 (CAC 8.38.020; AO No. 93-149, § 2, 10-15-93; AO No. 2002-163, § 3, 1-7-03)

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1 **Section 5.** Anchorage Municipal Code section 5.20.040 is hereby amended to
2 read as follows (*the remainder of the section is not affected and therefore not set*
3 *out*):
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5 **5.20.040 Unlawful employment practices.**

6
7 A. It is unlawful for:

- 8
9 1. An employer to refuse employment to a person, or to bar him
10 or her from employment, or to discriminate against him or her
11 in compensation, or in a term, condition or privilege of
12 employment or to discharge, expel, reduce, suspend or demote
13 him or her because of race, color, sex, sexual orientation,
14 gender identity, religion, national origin, marital status, age, or
15 physical or mental disability, unless the reason for the
16 discrimination is a bona fide occupational qualification.
17
18 2. A labor organization to exclude or to expel a person from its
19 membership or to discriminate against one of its members or
20 an employer or employee because of race, color, sex, sexual
21 orientation, gender identity, religion, national origin, marital
22 status, age, or physical or mental disability.
23
24 3. A person, employer or employment agency to broadcast,
25 publish, print, circulate or cause to be broadcasted, published,
26 printed or circulated a statement or advertisement in
27 connection with prospective employment, or to use a form of
28 application for employment that expresses, directly or
29 indirectly, a limitation, specification, preference or
30 discrimination as to race, color, sex, sexual orientation, gender
31 identity, religion, national origin, marital status, age, or physical
32 or mental disability.
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34 *** **
35 (CAC 8.40.040; AO No. 92-116(S); AO No. 93-99; AO No. 93-77; AO No. 93-149,
36 § 2, 10-15-93; AO No. 2002-163, § 3, 1-7-03)
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38 **Section 6.** Anchorage Municipal Code section 5.20.050 is hereby amended to
39 read as follows:
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41 **5.20.050 Unlawful practices in places of public accommodation.**

42
43 A. It is unlawful for a person, whether the owner, operator, agent or
44 employee of an owner or operator of a public accommodation, to:
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1. Refuse, withhold from or deny to a person any of its accommodations, advantages, facilities, benefits, privileges, services or goods of that place on account of race, color, sex, sexual orientation, gender identity, religion, national origin, marital status, age or physical or mental disability.
2. Publish, circulate, issue, display, post or mail a written or printed communication, notice or advertisement which states or implies that:
 - a. Any of the services, goods, facilities, benefits, accommodations, advantages or privileges of the public accommodation will be refused, withheld from or denied to a person of a certain race, color, sex, sexual orientation, gender identity, religion, national origin, marital status, age, or physical or mental disability; or
 - b. The patronage or presence of a person belonging to a particular race, color, sex, sexual orientation, gender identity, religion, national origin, marital status, age, or physical or mental disability is unwelcome, not desired, not solicited, objectionable or unacceptable.
3. Make a written or oral inquiry concerning the race, color, sex, sexual orientation, gender identity, religion, national origin, marital status, age, or physical or mental disability of an individual in connection with the solicitation, reservation, booking, sale or dispensing of its accommodations, advantages, facilities, benefits, privileges, services or goods.

(CAC 8.40.020; AO No. 93-149, § 2, 10-15-93; AO No. 2002-163, § 3, 1-7-03)

Section 7. Anchorage Municipal Code section 5.20.060 is hereby amended to read as follows:

5.20.060 Unlawful practices in educational institutions.

- A. It is unlawful for a person operating or assisting in the operation of an educational institution to:
 1. Refuse to admit or otherwise to discriminate against an individual with respect to the terms, conditions, accommodations, advantages, facilities, benefits, privileges or services of that institution on account of race, color, sex, sexual

1 orientation, gender identity, religion, national origin, marital
2 status, age, or physical or mental disability.

3
4 2. Make or use a written or oral inquiry or form of application for
5 admission that elicits information concerning the race, color,
6 sex, sexual orientation, gender identity, religion, national origin,
7 marital status, age, or physical or mental disability, of an
8 applicant for admission.

9
10 3. Require or cause to be required that a photograph of an
11 applicant for admission be submitted with an application for
12 admission.

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14 4. Publish, circulate or display, or cause to be published,
15 circulated or displayed, a written, printed, oral or visual
16 communication, advertisement or catalog or any other form of
17 publicity relating to admission that expresses or indicates a
18 preference, limitation, specification or discrimination on
19 account of the race, color, sex, sexual orientation, gender
20 identity, religion, national origin, marital status, age, or physical
21 or mental disability, of an applicant for admission.

22
23 5. Establish, announce or follow a policy of denial or limitation of
24 education opportunities for members of a group on account of
25 race, color, sex, sexual orientation, gender identity, religion,
26 national origin, marital status, age, or physical or mental
27 disability.

28
29 6. Use in the recruitment of potential applicants for admission, a
30 service or agency that discriminates against individuals on
31 account of race, color, sex, sexual orientation, gender identity,
32 religion, national origin, marital status, age, or physical or
33 mental disability.

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35 (CAC 8.40.030; AO No. 93-149, § 2, 10-15-93; AO No. 2002-163, § 4, 1-7-
36 03)

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38 **Section 8.** Anchorage Municipal Code section 5.20.070 is hereby amended to
39 read as follows:

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41 **5.20.070 Unlawful practices by municipality.**

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43 A. It is unlawful for the municipality or any public agency of the
44 municipality to:
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1. Refuse, withhold from or deny to a person any local, state or federal funds, services, goods, facilities, advantages or privileges because of race, color, sex, sexual orientation, gender identity, religion, national origin, marital status, age, or physical or mental disability.
2. Publish, circulate, issue, display, post or mail a written or printed communication, notice or advertisement which states or implies that any local, state or federal funds, services, goods, facilities, advantages or privileges of the office or agency will be refused, withheld from or denied to a person of a certain race, color, sex, sexual orientation, gender identity, religion, national origin, marital status, age, or physical or mental disability, or that the patronage of a person belonging to a particular race, color, sex, sexual orientation, gender identity, religion, national origin, marital status, age, or physical or mental disability is unwelcome, not desired or not solicited.

B. Where the provisions of this section 5.20.070 conflict with provisions of Title 7 of this code, this section 5.20.070 shall govern.

(AO No. 91-173(S); AO No. 92-116(S); AO No. 93-99; AO No. 93-149, § 2, 10-15-93; AO No. 2002-163, § 5, 1-7-03)

Section 9. Anchorage Municipal Code section 5.20.080 is hereby amended to read as follows:

5.20.80 Lawful practices.

- A. Notwithstanding any provision of this chapter, it shall not be unlawful for a person in connection with the sale or rental of real property, financing practices, employment practices, public accommodations, educational institutions, and practices of the municipality to make or keep records identifying race, color, sex, sexual orientation, gender identity, religion, national origin, marital status, age, or physical or mental disability, if the purpose of the record is to comply with federal or state equal opportunity laws or regulations or in furtherance of a program designed to ensure compliance with this title.
- B. The prohibitions against discrimination based on sexual orientation and gender identity in this chapter do not prohibit an employer or an operator of a place of public accommodation from:

~~**[Other provisions of this chapter notwithstanding, employers or operators of public accommodations may:]**~~

1. ~~**Maintaining and enforcing [e] gender-segregated restrooms, locker-rooms or dressing rooms, provided that persons are allowed to use such facilities consistent with their gender identity and [require persons to use facilities appropriate to their gender presentation, and]**~~ nothing in this chapter shall be deemed to require the provision of special facilities to accommodate any person(s) based upon sexual orientation or gender identity.

2. ~~**Imposing reasonable dress codes and grooming standards, provided that persons are allowed to dress or groom consistent with their gender identity.**~~

~~**Impose reasonable dress codes, work rules, codes of conduct, or other rules of general application, and nothing in this chapter shall be deemed to require special accommodation for persons based upon sexual orientation or gender identity.]**~~

~~**[3.] Require that a worker have a consistent gender presentation in the workplace.]**~~

(AO No. 93-149, § 2, 10-15-93; AO No. 2002-163, § 7, 1-7-03)

Section 10. Anchorage Municipal Code section 5.20.090 is hereby amended to read as follows:

5.20.090 Religious exemptions.

A. Religious-Preference Exception: It shall be lawful for a bona fide religious or denominational institution, organization, corporation, association, educational institution, or society, to limit, select or give preferential treatment in employment, admissions, accommodations, advantages, facilities, benefits, or services, to persons of the same religion or denomination, that is reasonably calculated to promote the religious principles for which it is established or maintained. ~~**[, and this title shall not be interpreted or applied to require such an organization to act in violation of the religious principles for which it is established or maintained.]**~~ Such organizations otherwise remain subject to the other provisions in this title with regard

1 to race, color, sex, sexual orientation, gender identity, religion,
2 national origin, marital status, age, or physical or mental disability.

3
4 **B.** Ministerial **Exception [exemption]**: This chapter shall not apply with
5 respect to the employment of individuals whose **[primary]** duties
6 **include [consist of]** teaching or spreading religious doctrine or belief,
7 religious governance, supervision of a religious **community [order]**,
8 supervision of persons teaching or spreading religious doctrine or
9 belief, or supervision or participation in religious ritual or worship.

10
11 **[C.]** ~~Religious conscience exemption: Except as a condition of a pre-~~
12 ~~existing employment or contractual relationship, no person,~~
13 ~~employer or operator of a public accommodation shall be~~
14 ~~compelled to make any communication in support of, or be~~
15 ~~compelled to appear at any ceremony, ritual, or observance that~~
16 ~~is in conflict with a sincerely held and demonstrable religious~~
17 ~~belief of that person, employer or operator.]~~

18
19 (AO No. 92-116(S); AO No. 93-99; AO No. 2002-163, § 4, 1-7-03)

20
21 **Section 11.** Anchorage Municipal Code section 5.50.020, is hereby amended to
22 read as follows (*the remainder of the section is not affected and therefore not set*
23 *out*):

24
25 **5.50.020 Fact finding procedures.**

26
27 A. After a complaint has been filed, staff shall convene a fact finding
28 conference with the parties to define issues, receive and exchange
29 information relevant to the complaint and response, if any, and
30 negotiate a voluntary resolution of the complaint, if possible, through
31 a pre-determination settlement agreement. Parties shall be permitted
32 to be fully represented by legal counsel at the fact finding conference.
33 Legal counsel shall be entitled to speak and present on behalf of the
34 represented party at the fact finding conference. Legal counsel may
35 not, however, cross-examine the other party and must submit any
36 questions through staff.

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39 D. (Reserved) [IF COUNSEL FOR ANY PARTY IS PRESENT, COUNSEL SHALL BE
40 LIMITED TO AN ADVISORY ROLE AND WILL NOT BE PERMITTED TO SPEAK FOR
41 THEIR CLIENT. FOR QUESTIONING PURPOSES, COUNSEL MAY ASK
42 QUESTIONS ONLY THROUGH STAFF.]

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1 (AR No. 92-223(S); AR No. 96-174, § 3, 10-22-96; AO No. 2002-163, § 15,
2 1-7-03)

3
4 **Section 12.** Anchorage Municipal Code section 5.50.030B, is **not [hereby]**
5 amended. **[to read as follows]** (*the remainder of the section is not affected and*
6 *therefore not set out*):

7
8 **5.50.030 Effect of failure to furnish responses to requests for**
9 **essential information or produce witnesses or attend fact**
10 **finding conference.**

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12 *** **

13 B. ~~[The Respondent's failure to participate in the fact-finding~~
14 ~~conference or to provide requested information cannot be~~
15 ~~treated as an admission or evidence of the allegations in the~~
16 ~~complaint. In order for staff to reach a substantial evidence~~
17 ~~determination it must rely upon actual evidence, whether direct~~
18 ~~or circumstantial, of discrimination.]~~

19
20 { If the respondent fails to timely furnish the information
21 requested in subsection 5.50.020b.2 of this title, of if the
22 respondent fails to provide responses to a request for essential
23 information or interrogatories, or fails to attend the fact finding
24 conference without good cause or unreasonably obstructs the
25 fact finding conference, this conduct may be treated as an
26 admission of the allegations in the complaint for purposes of the
27 substantial evidence determination only. }

28
29 (AR No. 92-223(S); AR No. 96-174, § 4, 10-22-96; AO No. 2002-163, § 15,
30 1-7-03)

31
32 **Section 13.** This ordinance shall become effective immediately upon its passage
33 and approval by the Assembly.

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35
36 PASSED AND APPROVED by the Anchorage Assembly this _____ day of
37 _____, 2015.

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40 _____
41 Chair
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1 ATTEST:

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5 _____
Municipal Clerk