

**AN ORDINANCE CREATING ARTICLE III OF CHAPTER 8 OF THE MUNICIPAL CODE OF THE CITY OF APPLETON, RELATING TO ACCOMMODATION AND EMPLOYMENT.**

(Safety and Licensing Committee – 4-2-14)

The Common Council of the City of Appleton does ordain as follows:

**Section 1:** That Article III of Chapter 8 of the Municipal Code of the City of Appleton, relating to accommodation and employment, is hereby created as follows:

**ARTICLE III. ACCOMMODATION AND EMPLOYMENT**

**Sec. 8-50. Declaration of policy; purpose and intent.**

(a) A vibrant, productive and economically successful city is made possible by the talents, contributions and well-being of its diverse residents. It is the policy of the City of Appleton that equal rights of all those who live and work in the city are assured, and that equal rights and equal opportunity within the context of the larger commercial and social fabric of the Appleton community are promoted.

(b) The practice of providing equal opportunity in employment and public accommodations to persons without regard to actual or perceived race, color, creed, religion, national origin, ancestry, age, sex/gender, disability, arrest/conviction record, marital status, sexual orientation, gender identity and/or gender expression, political affiliation, results of genetic testing, honesty testing, pregnancy or childbirth, military service, disabled veteran or covered veteran status, service in the U.S. Armed Force, the State Defense force, National Guard of any state, or any reserve component of the United States or State military forces, or an individual's affiliation with or perceived affiliation with any of these protected categories, is a desirable goal of the City of Appleton and a matter of legitimate concern to its government. Discrimination against any of Appleton's residents or visitors endangers the rights and privileges of all and deprives the community of the fullest productive capacity of those of its members so discriminated against and denies to them the sufficiency of earnings necessary for maintaining the standards of living consistent with their abilities and talents.

(c) Provision for adequate safeguards against discrimination is a proper and necessary function of city government. To protect the health, safety and general welfare of all inhabitants of the city, and all persons employed and living within the city, it is declared to be the public policy of this city to foster and enforce to the fullest extent of the law equal opportunity employment and public accommodations without regard to actual or perceived race, color, creed, religion, national origin, ancestry, age, sex/gender, disability, arrest/conviction record, marital status, sexual orientation, gender identity and/or gender expression, political affiliation, results of genetic testing, honesty testing, pregnancy or childbirth, military service, disabled veteran or covered veteran status, service in the U.S. Armed Force, the State Defense force, National Guard of any state, or any reserve component of the United States or State military forces, or an individual's affiliation with or perceived affiliation with any of these protected

categories. To fully effectuate this policy of promoting nondiscrimination, the city shall endeavor to eliminate all discrimination that may occur within employment and accommodation within the city of Appleton.

(d) Where applicable, this chapter shall be interpreted and applied consistently with the provisions of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. sections 3601, et seq., 24 C.F.R. sections 100, et seq., and ss. 66.1011, 106.50 and 111.31, Wis. Stats., and any successor provisions of state and federal law.

#### **Sec. 8-51. Definitions.**

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

*Age* means being age 40 or older.

*Ancestry* means the country, nation, tribe or other identifiable group from which one descends.

*Arrest/Conviction Record* means information indicating a person was questioned, arrested, charged or convicted of a felony or misdemeanor. An employer may reject an applicant or fire an employee whose conviction is substantially related to the job.

*Color* means color of skin.

*Disability* means, with respect to a person, any of the following:

- (1) A physical or mental impairment which substantially limits one or more of the person's major life activity.
- (2) A record of having an impairment.
- (3) Being perceived as having impairment.
- (4) This term does not include current, illegal use of or addition to a controlled substance. The behavioral manifestations of a mental disability may be taken into consideration in determining whether or not the applicant is qualified.

*Discriminate, discrimination or discriminatory* shall mean any act, policy, advertisement or practice which, regardless of intent, has the effect of subjecting any person to differential treatment as a result of that person's actual or perceived race, color, creed, religion, national origin, ancestry, age, sex/gender, disability, arrest/conviction record, marital status, sexual orientation, gender identity and/or gender expression, political affiliation, results of genetic testing, honesty testing, pregnancy or childbirth, military service, disabled veteran or covered veteran status, service in the U.S. Armed Force, the State Defense force, National Guard of any state, or any reserve component of the United States or

State military forces. Discrimination also includes any differential treatment because of one's association with a person or group of people identified herein.

**Employee** shall mean any individual employed or seeking employment from an employer.

**Employer** shall mean any person who, for compensation, regularly employs five or more individuals, not including the employer's parents, spouse or children. For purposes of [this ordinance] an "employer" is also any person acting on behalf of an employer, directly or indirectly, or any employment agency.

**Gender identity and/or gender expression** means a person's gender-related self-identity, appearance, expression or behavior, regardless of the person's assigned sex at birth.

**Marital Status** means the status of being married, single, divorced, separated or widowed.

**Military Service** means service in the U.S. armed forces, the state defense force, the national guard of any state, or any other reserve component of the U.S. armed forces.

**National origin** means generally a member of a nation by origin, birth or naturalization or having common origins.

**Outside Lawful Products** means use or nonuse of lawful products (e.g., tobacco, alcohol) off the employer's premises during nonworking hours.

**Person** shall mean any natural person, firm, corporation, partnership or other organization, association or group of persons however arranged.

**Place of public accommodation** shall all establishments within the city of Appleton which offers goods, services, accommodations and entertainment to the public. A place of public accommodation does not include any institution or club which by its nature is distinctly private.

**Race** means generally a member of a group united or classified together on the basis of common history, nationality or geography.

**Religion or creed** means a system of religious beliefs including moral or ethical beliefs about right and wrong that are sincerely held with the strength of traditional religious views.

**Sex/gender** means being female or male.

**Sexual Orientation** means a person's actual or perceived heterosexuality, homosexuality, asexuality, or bisexuality.

#### **Sec. 8-52. Prohibited acts of discrimination; employment.**

(a) With regard to employment, it shall be unlawful for any employers or labor organizations, to engage in any of the following acts, wholly or partially

for a discriminatory reason:

- (1) To discriminate against any individual, with respect to failure to hire, refusal to hire, discharge, compensation, terms, conditions, or privileges of employment, including promotion; however nothing in this subsection shall be construed to require any employer to provide benefits, such as insurance, to individuals not employed by the employer;
- (2) To limit, segregate, or classify employees in any way which would deprive or tend to deprive any employee of employment opportunities, or which would otherwise tend to adversely affect his or her status as an employee; or
- (3) To fail or refuse to refer for employment, or to give negative information to a potential employer of any individual, in such a manner that would deprive or limit an individual's employment opportunities or that would otherwise adversely affect an individual's status as an applicant or prospective employee.

**Sec. 8-53. Prohibited acts of discrimination; business establishment or public accommodations.**

It shall be unlawful for a business establishment or place of public accommodation to deny, directly or indirectly, any person the full enjoyment of the goods, services, facilities, privileges, advantages, and accommodations wholly or partially for a discriminatory reason.

**Sec. 8-54. Jurisdiction.**

(a) The City of Appleton shall not exercise jurisdiction over any complaint that sets forth or states any facts or allegations that are subject matter within the jurisdiction of any state or federal agency, including but not limited to the U.S. Equal Employment Opportunity Commission or the State of Wisconsin, Department of Workforce Development, regardless of whether the complainant has chosen to file with that said agency or not.

When a complaint or inquiry is presented to the Mayor or to designated staff, and it appears that the City does not have jurisdiction as indicated above, the complainant shall be referred to the appropriate state or federal enforcement agencies.

(b) It shall not be an unlawful discriminatory practice for an employer to observe the conditions of a bona fide seniority system or a bona fide employee benefit system based on age such as a retirement, pension or insurance plan which is not a subterfuge or pretext to evade the purposes of this ordinance.

(c) Nothing contained in this ordinance shall be deemed to prohibit selection or rejection based solely upon a bona fide occupational qualification, a bona fide physical requirement, or, as to a religious or denominational institution, based upon a preference for applicants of the same religion or denomination.

**Sec. 8-55. Enforcement.**

(a) Any person who claims to have been injured under this ordinance may file a written complaint with the Mayor of Appleton (or designee), setting forth therein the details, including location of property, names, dates, witnesses, and other factual matters. All such complaints shall be signed by the complainant. Such complaints shall be filed within one year after the alleged violation of this ordinance.

(b) The Mayor ~~shall~~may receive, hear and determine complaints as provided herein. The Mayor ~~shall~~may adopt rules, policies and regulations, and involve City staff as the Mayor deems appropriate, consistent with this ordinance and the laws of this state to carry out the policy and provisions of this ordinance and the powers and duties of the Office of the Mayor.

(c) ~~If~~The Mayor determines there is probably cause to find a complaint to be founded, he may informally recommend solutions to the parties to the complaint to address the complaint situation.

(d) A timely-filed complaint shall be referred immediately to the City Attorney.

**Sec. 8-56. Penalty; forfeiture.**

~~A violation of this ordinance is a civil infraction under this ordinance.~~Any person found in violation of this ordinance shall, for the first violation, forfeit not less than \$500 nor more than \$5,000, plus the cost of the action.

(1) Each day upon which a violation occurs shall constitute a separate violation.

(b) For each successive violation within 5 years of having been adjudged to be in violation of this ordinance, the person shall forfeit not less than \$1,000 nor more than \$10,000.

**Sec. 8-57. Private actions.**

In addition to the remedies set forth in this ordinance, an aggrieved person may commence a civil action in any court of competent jurisdiction to obtain appropriate relief with respect to violations set forth in this Article.

**Section 2:** This ordinance shall be in full force and effect from and after its passage and publication.

Dated: \_\_\_\_\_

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Timothy M. Hanna, Mayor

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Wendy Helgeson, Deputy City Clerk