

CITY OF BOISE

To: Mayor and Council
FROM: R. Stephen Rutherford
ORDINANCE NUMBER: O-36-12
DATE: November 7, 2012
SUBJECT: Anti-Discrimination Ordinance

ACTION REQUIRED: Approval

RECOMMENDATION: Approval

FISCAL IMPACT/BUDGET IMPLICATIONS: The resources required to enforce this ordinance will largely depend upon how many complaints are made to the Boise Police Department. The complaints will be received and investigated by the Boise Police Department and the administrative process as well as possible prosecution by the Boise City Attorney's Office. It is anticipated that current staffing will be sufficient to properly administer and enforce the ordinance.

BACKGROUND: This ordinance is being proposed by Council President Maryanne Jordan and Council Member Lauren McLean to ensure equal protection for everyone who works and/or lives in the City of Boise. The attached Anti-Discrimination Ordinance prohibits discrimination on the basis of sexual orientation and gender identity/expression in matters of employment, housing and places of public accommodation. The Ordinance has a very important mediation component which may serve to keep a criminal charge from being filed. Should a complaint be filed in court, a violation of the ordinance is a misdemeanor punishable by a fine of up to \$1,000 and/or up to six months in jail. A violation may be reduced to a civil infraction punishable by a \$100 fine plus court costs by a prosecutor if the defendant takes remedial measures, trains employees or otherwise conforms his/her conduct to the satisfaction of the prosecutor.

ATTACHMENTS: Ordinance O-36-12 and Summary

ORDINANCE NO. _____

BY THE COUNCIL:

CLEGG, EBERLE, JORDAN, MCLEAN,
QUINTANA AND THOMSON

AN ORDINANCE ADDING A NEW SECTION TO BOISE CITY CODE TITLE 6, CHAPTER 2, TO PROHIBIT DISCRIMINATORY ACTS IN HOUSING, EMPLOYMENT AND PUBLIC ACCOMMODATIONS BASED UPON SEXUAL ORIENTATION AND GENDER IDENTITY/EXPRESSION; APPROVING A SUMMARY OF THE ORDINANCE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, it is the policy and intent of the City of Boise that no person be denied equal protection of the laws; nor shall any person be discriminated against because of his or her sexual orientation or gender identity/expression; and

WHEREAS, state and federal laws prohibit discrimination in the areas of employment, public accommodation, and housing on the basis of race, color, age, sex, national origin, and/or disability, but there are no such protections against discrimination on the basis of sexual orientation or gender identity/expression; and

WHEREAS, nothing contained herein should be construed as supporting or advocating any particular doctrine, position, point of view, or religious view. To the contrary, it is the intention of this ordinance that all persons are treated fairly and equally in the City of Boise.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF BOISE CITY, IDAHO:

Section 1. The City Code of the City of Boise shall be amended by the addition of a new Chapter 2 to Title 6, entitled Discrimination Prohibited, and to provide as follows:

Chapter 2, Section 1

DISCRIMINATION PROHIBITED

Section 6-02-01 PURPOSE AND DECLARATION OF POLICY

A. In order to ensure that all persons, regardless of sexual orientation and/or gender identity/expression enjoy the full benefits of citizenship and are afforded equal opportunities for employment, housing, commercial property, and the use of public accommodations, the City of Boise has determined that discrimination on the basis of sexual orientation and gender identity/expression must be addressed, and appropriate legislation be enacted.

- B. It is hereby declared that every individual in the City of Boise has the right to work and earn wages through gainful employment, has the right to seek housing, and has the right to enjoy public accommodation and hospitality.
- C. It is hereby declared to be the public policy of the City of Boise to foster the employment of all individuals in accordance with their abilities. Every individual has the right to work and earn wages through gainful employment. Discriminatory employment practices are detrimental because they impede the social and economic progress of a city by preventing all of the city's citizens from contributing to the cultural, spiritual, social, and commercial life of the community. The contributions of all the citizens of the City of Boise are essential to the City's growth, vitality, and prosperity.
- D. It is the intent of this Chapter that all persons be treated fairly and equally, and it is the express intent of this Chapter to guarantee fair and equal treatment under the law to all people in the City of Boise. The denial of fair and equal treatment under the law due to sexual orientation or gender identity/expression is detrimental to the health, safety, and welfare of the city's citizens, and damages a city's economic well-being.
- E. This Chapter shall be deemed an exercise of the police power of the City of Boise for the protection of the public welfare, prosperity, health and peace of the City of Boise, its residents and the community.
- F. The prohibitions against discriminatory acts as provided for in this ordinance are intended to supplement state and federal civil rights law prohibiting discrimination in the areas of employment, public accommodations, and housing. For complaints alleging discrimination on a basis proscribed under state or federal law (e.g. race, color, religious creed, ancestry, age, sex, national origin, and/or disability) the Complainant is advised of his or her right to file a report alleging a violation of Idaho Code section 18-7301 et. seq., and/or his or her right to file a complaint with the Idaho Commission on Human Rights and/or the Federal Equal Employment Opportunity Commission pursuant to Title VII of the Civil Rights Act of 1964 as amended, the Fair Housing Act of 1968 as amended, or the Americans with Disabilities Act of 1990 as amended.

Section 6-02-02 DEFINITIONS

- A. "DENY" includes any act which, directly or indirectly, by any person or his agent or employee, results or is intended or calculated to result in whole or in part in any discrimination, distinction, restriction, or unequal treatment or representation. It also includes, but is not limited to, the requiring of a person to pay a larger sum than the uniform rates charged other persons, or the refusing or withholding from persons the admission, patronage, custom, presence, frequenting, dwelling, staying, or lodging in any place of public resort, accommodation, assemblage, or amusement except for conditions and limitations established by law and applicable alike to all persons, regardless of sexual orientation and/or gender identity/expression,

- B. “DISCRIMINATION” is 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 any preferential treatment to any person because of that person’s sexual orientation or gender identity/expression.
- C. “FULL ENJOYMENT OF” shall be construed to include, but not be limited to, the right to use, rent or purchase real property, any service, commodity or article of personal property offered or sold by any person or establishment to the public, and the admission of any person to accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage or amusement, without acts directly or indirectly causing persons of any particular sexual orientation and/or gender identity/expression to be treated as not welcome, accepted, desired or solicited.
- D. “GENDER EXPRESSION/IDENTITY” means a gender-related identity, appearance, expression or behavior of an individual regardless of a person's assigned sex at birth.
- E. “HOUSING ACCOMMODATION” is a building or portion of a building, whether constructed or to be constructed, that is or will be used as the home, domicile, residence, or sleeping quarters of its occupants.
- F. “PERSON” shall mean any natural person, firm, corporation, partnership or other organization, association or group of persons however arranged.
- G. “PLACE OF PUBLIC RESORT, ACCOMMODATION, ASSEMBLAGE OR AMUSEMENT” includes, but is not limited to any public place, licensed or unlicensed, kept for gain, hire or reward, or where charges are made for admission, service, occupancy or use of any property or facilities, whether conducted for the entertainment, housing or lodging of transient guests, or for the benefit, use or accommodation of those seeking health, recreation or rest, or for the sale of goods and merchandise, or for the rendering of personal services, or for public conveyance or transportation on land, water or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates, or assembles for amusement, recreation or public purposes, or public halls, public elevators and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or any educational institution wholly or partially supported by public funds, or schools of special instruction, or nursery schools, or day care centers or children's camps; nothing herein contained shall be construed to include, or apply to, any institute, bona fide club, or place of accommodation, which is by its nature distinctly private, provided that where public use is permitted that use shall be covered by this section; nor shall anything herein contained apply to any educational facility operated or maintained by a bona fide religious or sectarian institution.

- H. “SEXUAL ORIENTATION” is actual or perceived homosexuality, heterosexuality and/or bisexuality.

Section 6-02-03 PROHIBITED DISCRIMINATORY ACTS

The following acts are prohibited and shall constitute a misdemeanor:

- A. To deny to any other person because of sexual orientation and/or gender identity/expression the right to work: (a) by failing or refusing to hire, (b) by discharging, (c) by barring from employment, (d) by discriminating against such person in compensation or in other terms or conditions of employment, or (e) otherwise discriminating against an individual with respect to employment.
- B. To deny to or to discriminate against any person because of sexual orientation and/or gender identity/expression the full enjoyment of any of the accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage, or amusement.
- C. To deny to or discriminate against any other person because of sexual orientation and/or gender identity/expression in the sale, purchase, lease or rental of any housing accommodation, or to otherwise discriminate in the terms and conditions, maintenance, improvement or repair of any housing accommodation.

Section 6-02-04 EXCEPTIONS

- A. Notwithstanding any other provision herein, nothing in this Chapter is intended to alter or abridge other rights, protections, or privileges secured under state and/or federal law. This ordinance shall be construed and applied in a manner consistent with First Amendment jurisprudence regarding the freedom of speech and exercise of religion.
- B. This chapter does not apply to:
1. Religious corporations, associations, educational institutions, or societies.
 2. An expressive association whose employment of a person protected by this chapter would significantly burden the association’s rights of expressive association under *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000).
 3. The United States government, any of its departments or agencies, or any corporation wholly owned by it; or the state of Idaho or any of its departments, agencies, or political subdivisions, except the City of Boise.
- C. This ordinance shall not apply: (a) to the rental of a housing accommodation in a building which contains housing accommodations for not more than two (2) families living independently of each other, if the lessor or a member of his family resides in one (1) of the housing accommodations, or (b) to the rental of a room or rooms in a single family

residential housing accommodation by an individual if he or a member of his family resides therein.

Section 6-02-05 PENALTY

- A. A violation of this Chapter is a misdemeanor, punishable by a fine not exceeding one thousand dollars (\$1000) and imprisonment in the county jail not to exceed six (6) months or both.
- B. A prosecutor may reduce the violation to an infraction, payable by a \$100 fine, if the defendant engages in corrective actions, which may include, but are not limited to the following: sensitivity training for the defendant and/or the defendant's employees; the defendant's agreement to adopt and pursue a policy of nondiscrimination in its practices; and the defendant's agreement to not engage in discriminatory practices in the future. The charge shall be filed as a misdemeanor violation and may only be reduced upon motion of the prosecutor. There shall be no right to a trial by jury for an infraction citation or complaint.
- C. A complaint filed under the provisions of this Chapter must be filed within 180 days of the alleged discriminatory conduct.
- D. Any person who falsely reports a violation of this chapter may be charged with the crime of False Reporting, Boise City Code 6-01-13.

Section 6-02-06 UNLAWFUL INTIMIDATION, RETALIATION, AND INTERFERENCE

It shall be 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, for assisting, or participating in any manner in the investigation, or in mediation concerning this Chapter.

Section 6-02-07 PRIVATE RIGHT OF ACTION

There is no private right of action that is created by this Chapter or money damages available to any person based on this Chapter.

Section 6-02-08 SEVERABILITY

If any provision or section of this Ordinance shall be held to be invalid by a court of competent jurisdiction, then such provision or section shall be considered separately and apart from the remaining provisions or sections of this Ordinance, which shall remain in full force and effect.

Section 2. Nothing in this Ordinance shall be construed to affect any suit or proceedings in any Court, any rights acquired or liability incurred, and permit issued, or any cause or causes of action existing under the General Ordinances of the City of Boise or the State of Idaho.

Section 3. That a summary of this Ordinance, attached hereto as Exhibit A, is approved as to both form and content.

Section 4. That this Ordinance shall be in full force and effect January 1, 2013.

PASSED by the Council of the City of Boise, Idaho, this ___ day of _____, 2012.

APPROVED by the Mayor of the City of Boise, Idaho this ___ day of _____, 2012.

APPROVED:

ATTEST:

David H. Bieter
MAYOR

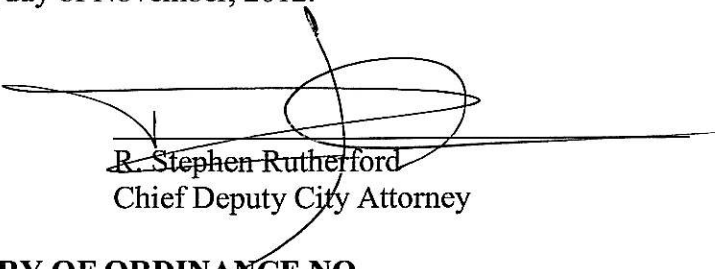
Debbie Broughton
EX-OFFICIO CITY CLERK

EXHIBIT "A"

**STATEMENT OF BOISE CITY ATTORNEY
AS TO ADEQUACY OF SUMMARY
OF ORDINANCE NO. _____**

The undersigned, R. Stephen Rutherford, in his capacity as Chief Deputy City Attorney of the City of Boise City, Idaho, hereby certifies that he is a legal advisor of the City and has reviewed a copy of the attached Summary of Ordinance No. _____ of the City of Boise City, Idaho, and has found the same to be true and complete and provides adequate notice to the public pursuant to Idaho Code § 50-901A(3).

DATED this 9 day of November, 2012.


R. Stephen Rutherford
Chief Deputy City Attorney

**SUMMARY OF ORDINANCE NO. _____
OF THE CITY OF BOISE CITY, IDAHO**

PUBLIC NOTICE IS HEREBY GIVEN that the City of Boise City, Idaho, adopted at its regular meeting of _____, _____, 2012, that Ordinance No. _____ entitled:

AN ORDINANCE ADDING A NEW SECTION TO BOISE CITY CODE TITLE 6, CHAPTER 2, TO PROHIBIT DISCRIMINATORY ACTS IN HOUSING, EMPLOYMENT AND PUBLIC ACCOMMODATIONS BASED UPON SEXUAL ORIENTATION AND GENDER IDENTITY/EXPRESSION; APPROVING A SUMMARY OF THE ORDINANCE; AND PROVIDING AN EFFECTIVE DATE.

This ordinance creates a new Section 2 to Title 6 of Boise City Code, entitled Discrimination Prohibited. The purpose of the ordinance is to ensure that all persons, regardless of sexual orientation and/or gender identity/expression enjoy the full benefits of citizenship and are afforded equal opportunities for employment, housing, commercial property, and the use of public accommodations. The ordinance sets forth definitions and lists prohibited discriminatory acts pertaining to: Employment, such as failing or refusing to hire, discharging, barring from employment, discriminating in compensation or in other terms or conditions of employment; Public Accommodation, enjoyment of any of the accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage, or amusement; and Housing, in terms of the sale, purchase, lease or rental of any housing accommodation within the City of Boise.

The ordinance sets forth exceptions to the ordinance regarding religious organizations; expressive associations whose employment of a person would significantly burden the association's rights of expressive association under *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000); other governmental entities; and rental of a housing containing accommodations for not more than two families living independently of each other, if the lessor or a member of his family resides in one of the housing accommodations, or to the rental of a room or rooms in a single family residential housing accommodation by an individual if he or a member of his family resides therein.

The ordinance sets forth misdemeanor penalties for violation of the ordinance and also provides that a prosecutor may reduce the violation to an infraction, payable by a \$100 fine, if the defendant engages in corrective actions. The ordinance makes it unlawful to discriminate against, harass, threaten, harm, damage, or otherwise penalize another person for opposing an unlawful practice, for filing a complaint, for assisting, or participating in any manner in the investigation, or in mediation concerning the ordinance. The ordinance clarifies that there is no private right of action that is created by this ordinance and that if any provision or section of the ordinance shall be held to be invalid by a court of competent jurisdiction, then such provision or section shall be considered separately and apart from the remaining provisions or sections of the ordinance, which shall remain in full force and effect and that the ordinance shall be construed to affect any suit or proceedings in any Court, any rights acquired or liability incurred, and permit issued, or any cause or causes of action existing under the General Ordinances of the City of Boise or the State of Idaho.

The ordinance establishes an ordinance effective date and approves this ordinance summary. The effective date of the Ordinance is the date of its passage, approval and publication. A copy of the full text of the Ordinance is available at the City Clerk's office, 150 North Capitol Boulevard, in Boise, Idaho 83701. Examination may be requested in writing or in person during regular business hours of the City Clerk's office, from 8:00 a.m. until 5:00 p.m. pursuant to Section 50-901A(4), Idaho Code.

DATED this _____ day of _____, 2012.

City of Boise City, Idaho

ATTEST:

MAYOR
David H. Bieter

EX-OFFICIO CITY CLERK