

## ORDINANCE NO. 3535

### AN ORDINANCE AMENDING CHAPTER 307 OF THE CODE OF ORDINANCES OF THE CITY OF FOND DU LAC, DISCRIMINATION

The City Council of the City of Fond du Lac do ordain as follows:

**Section 1.** That Chapter 307, DISCRIMINATION is hereby amended to read as follows:

#### **§ 307-1. Declaration of policy.**

The practice of providing equal opportunities in housing and public accommodations without regard to sex, race, color, sexual orientation, **gender identity or expression**, handicap, religion, national origin, sex or marital status of the person maintaining a household, lawful source of income, age, ancestry or familial status is a desirable goal of the City and a matter of legitimate concern to its government. Discrimination against any of the City's citizens or visitors endangers the rights and privileges of all. The denial of equal opportunity intensifies group conflict, undermines the foundations of our democratic society and adversely affects the general welfare of the community. Denial of equal opportunity in housing compels individuals and families who are discriminated against to live in dwellings below the standards to which they are entitled. Denial of equal opportunity in public accommodations subjects those discriminated against to embarrassment and discomfort and creates distress and unrest within the community. Provision for adequate safeguards against such discrimination is a proper and necessary function of the City government. In order that the peace, freedom, safety and general welfare of all inhabitants of the City may be protected and ensured, it is hereby declared to be the public policy of the City to encourage and foster to the fullest extent the protection by law of the rights of all of its inhabitants to equal opportunity in housing and public accommodations without regard to sex, race, color, sexual orientation, handicap, religion, national origin, marital status of the person maintaining a household, lawful source of income, age, ancestry or familial status.

#### **§ 307-2. Definitions.**

The following terms have the meanings indicated:

**DISCRIMINATE AND DISCRIMINATION** — To segregate, separate, exclude or treat any person or class of persons unequally because of sex, race, color, sexual orientation, handicap, religion, national origin, sex or marital status of the person maintaining a household, lawful source of income, age, ancestry or familial status. It is intended that the factors set forth herein shall be the sole basis of prohibiting discrimination under §307-3.

**GENDER** -- refers to the attitudes, feelings, and behaviors that a given culture associates with a person's biological sex. Behavior that is compatible with cultural expectations is referred to as gender-normative; behaviors that are viewed as incompatible with these expectations constitute gender non-conformity.

**GENDER IDENTITY** — Gender identity refers to “one’s sense of oneself as male, female, or transgender” (American Psychological Association, 2006). When one’s gender identity and biological sex are not congruent, the individual may identify as transsexual or as another transgender category (cf. Gainor, 2000).

**GENDER EXPRESSION** — Gender expression refers to the “...way in which a person acts to communicate gender within a given culture; for example, in terms of clothing, communication patterns and interests. A person’s gender expression may or may not be consistent with socially prescribed gender roles, and may or may not reflect his or her gender identity” (American Psychological Association, 2008. p. 28).

**HANDICAP** — Any physical disability or developmental disability as defined under §51.01(5)(a), Wis. Stats.

**HOUSING** — Any improved property, including any mobile home as defined in §66.0435, Wis. Stats., which is used or occupied or is intended, arranged or designed to be used or occupied as a residence, home or place of habitation for one or more human beings.

**LODGING ESTABLISHMENT** — As defined in §106.52(1)(d), Wis. Stats.

**PERSON** — One or more individuals, partnerships, associations, corporations, legal representatives, trustees, receivers or other fiduciaries or the agent or agents thereof.

**PUBLIC PLACE OF ACCOMMODATION OR AMUSEMENT** — As defined in §106.52(1)(e), Wis. Stats.

**SEX** --- refers to a person’s biological status and is typically categorized as male, female, or intersex (i.e., atypical combinations of features that usually distinguish male from female). There are a number of indicators of biological sex, including sex chromosomes, gonads, internal reproductive organs, and external genitalia.

**TRANSFER** — The term shall not apply to the transfer of property by will or gift.

**UNIMPROVED RESIDENTIAL LOT** — Any residential lot upon which no permanent building or structure containing living quarters has been constructed.

### **§ 307-3. Discrimination in housing.**

A. Prohibited. No person shall discriminate:

- (1) By refusing to sell, lease, finance or contract to construct housing or by refusing to discuss the terms thereof.
- (2) By refusing to permit inspection or exacting different or more stringent price, terms or conditions for the sale, lease, financing or rental of housing.

- (3) By refusing to finance or sell an unimproved residential lot or to construct a home or residence upon such lot.
- (4) By publishing, circulating, issuing or displaying or causing to be published, circulated, issued or displayed any communication, notice, advertisement or sign in connection with the sale, financing, lease or rental of housing, which states or indicates any discrimination in connection with housing.
- (5) For a person in the business of insuring against hazards by refusing to enter into or by exacting different terms, conditions or privileges with respect to a contract of insurance against hazards to a dwelling.
- (6) By refusing to renew a lease, causing the eviction of a tenant from rental housing or engaging in the harassment of a tenant.

B. Exceptions.

- (1) Nothing in this subsection shall prohibit discrimination on the basis of age in relation to housing designed to meet the needs of elderly individuals.
- (2) Nothing in this subsection shall prohibit a person from exacting different or more stringent terms or conditions for financing housing based on the age of the individual applicant for financing if the terms or conditions are reasonably related to the individual applicant.
- (3) Nothing in this subsection shall prohibit the development of housing designed specifically for persons with a handicap and discrimination on the basis of handicap in relation to such housing.

**§ 307-4. Discrimination in public place of accommodation or amusement.**

A. No person may do any of the following:

- (1) Deny to another or charge another a higher price than the regular rate for the full and equal enjoyment of any public place of accommodation or amusement because of sex, race, color, sexual orientation, handicap, religion, national origin, sex or marital status of the person maintaining a household, lawful source of income, age, ancestry or familial status.
- (2) Deny to an adult or charge an adult a higher price than the regular rate for the full and equal enjoyment of a lodging establishment because of age, subject to §125.07, Wis. Stats.

- (3) Give preferential treatment to some classes of persons in providing services or facilities in any public place of accommodation or amusement because of sex, race, color, sexual orientation, handicap, religion, national origin, sex or marital status of the person maintaining a household, lawful source of income, age, ancestry or familial status.
  - (4) Directly or indirectly publish, circulate, display or mail any written communication which the communicator knows is to the effect that any of the facilities of any public place of accommodation or amusement will be denied to any person by reason of sex, race, color, sexual orientation, handicap, religion, national origin, sex or marital status of the person maintaining a household, lawful source of income, age, ancestry or familial status or that the patronage of a person is unwelcome, objectionable or unacceptable for any of those reasons.
  - (5) Directly or indirectly publish, circulate, display or mail any written communication which the communicator knows is to the effect that any of the facilities of a lodging establishment will be denied to an adult because of age, subject to §125.07, Wis. Stats.
  - (6) Refuse to furnish or charge another a higher rate for any automobile insurance because of sex, race, color, sexual orientation, handicap, religion, national origin, sex or marital status of the person maintaining a household, lawful source of income, age, ancestry or familial status.
  - (7) Refuse to rent, charge a higher price than the regular rate or give preferential treatment because of sex, race, color, sexual orientation, handicap, religion, national origin, sex or marital status of the person maintaining household, lawful source of income, age, ancestry or familial status, regarding the use of any private facilities commonly rented to the public.
- B. Nothing in Subsection A prohibits separate dormitories at higher educational institutions or separate public toilets, showers, saunas and dressing rooms for persons of different sexes.
- C. Nothing in Subsection A prohibits separate treatment of persons based on sex with regard to public toilets, showers, saunas and dressing rooms for persons of different sexes.

**§ 307-5. Aiding and abetting.**

No person shall aid, abet, incite, compel or coerce the doing of any act which violates this section or obstructs or prevents any person from complying with the provisions of this chapter.

**§ 307-6. Equal Opportunities Commission.**

The City Manager, subject to confirmation by the City Council, shall appoint an Equal Opportunities Commission, consisting of five members, one of whom shall be designated chairman

by the members of the Commission. Members shall be appointed from the entire City and shall be representative of all races, creeds, colors, organizations and fields of endeavor. They shall receive no compensation for their services.

- A. The term of office shall expire on the last day of April of each year. Two members shall be initially appointed for a one-year term, two members for two-year terms and one member for a three-year term. Thereafter, appointments shall be for three-year terms. Any appointments to fill vacancies on the Commission shall be for the duration of the unexpired term only.
- B. The Equal Opportunities Commission shall have the following powers and duties:
  - (1) To study the existence, character, causes and extent of the denial of equal opportunities because of sex, race, color, sexual orientation, handicap, religion, national origin, sex or marital status of the person maintaining a household, lawful source of income, age, ancestry or familial status.
  - (2) To informally recommend solutions to individuals' problems that may arise which involve the denial of equal opportunities because of sex, race, color, sexual orientation, handicap, religion, national origin, sex or marital status of the person maintaining a household, lawful source of income, age, ancestry or familial status.
  - (3) To disseminate information and provide technical assistance, consultation training programs and other techniques to educate the people of the City and to aid both private and public agencies to use their resources to promote equal opportunities for all persons.
  - (4) To receive complaints alleging violation of this section and to attempt to eliminate or remedy any violation by means of conciliation, persuasion, education or any other means to make the complainant whole again. In case agreement is reached, a conciliation agreement in writing shall be signed by the complainant and respondent and by the chairman of the Equal Opportunities Commission. The signed conciliation agreement shall have the effect of a Commission order. In those cases where the Commission obtains compliance with this section before a hearing is held or where the Commission, upon investigation, finds that the complaint is without foundation, no public disclosure shall be made by the Commission of the names of the person or persons named in the complaint and of the complainant, unless required by §19.52, Wis. Stats. Nothing herein shall prohibit confidential communications and exchange of information including, but not limited to, the names of the people involved and the results of any investigation between the Equal Opportunities Commission and other official governmental agencies.
  - (5) To render from time to time, but not less than once a year, a written report of its activities and recommendations to the City Manager and to the City Council.

- (6) To adopt such rules and regulations as may be necessary to carry out the purposes and provisions of this chapter.
- C. The Commission may promulgate such rules as are necessary for it to carry out its duties and in this regard may hold hearings, take testimony and make independent investigations. The Commission may, upon its motion, test and investigate for the purpose of establishing violations and may make, sign and file complaints alleging violations and initiate studies to carry out their duties. The Commission may from time to time designate a commissioner or commissioners to carry out its duties.
- D. The Equal Opportunities Commission shall use the following procedures in acting on complaints of discrimination:
  - (1) The Commission may receive and investigate a complaint charging an alleged discrimination if the complaint is filed with the Commission no more than 300 days after the alleged discrimination occurred. A complaint shall be a written statement of the essential facts constituting the discrimination charged and shall be verified.
  - (2) If the Commission finds probable cause to believe that any discrimination has been or is being committed, it shall immediately endeavor to eliminate the practice by conference, conciliation or persuasion. In case of failure, so to eliminate the discrimination, the Commission shall issue and serve a written notice of hearing, specifying the nature of the discrimination which appears to have been committed and requiring the respondent to answer the complaint in writing within 10 days after receipt of the notice of hearing and to appear at the hearing on the appointed date. The notice shall specify a time of hearing not less than 30 days after service of the notice of hearing. The testimony at the hearing shall be recorded.
  - (3) If after the hearing the Commission finds that the respondent has engaged in discrimination, it shall make written findings and order such action by the respondent as will redress the injury done to complainant in violation of this section, bring respondent into compliance with its provisions and generally effectuate the purpose of this chapter.
  - (4) The Commission shall serve a certified copy of its findings and order on the respondent.
  - (5) If the Commission finds that the respondent has not engaged in discrimination as alleged in the complaint, it shall serve a certified copy of its findings on the complainant, together with an order dismissing the complaint.
  - (6) The Commission shall monitor in such manner as it shall determine appropriate compliance with its conciliation agreements and order.

- (7) Whenever in the judgment of the Commission the judicial enforcement of this section is necessary, the Commission shall in writing request the City Council to enforce this chapter in the name of the City.
- (8) Upon receipt of a request by the City Council, the City Attorney shall have the authority to seek enforcement of this chapter in a court of competent jurisdiction.
- (9) All orders of the Equal Opportunities Commission shall be final administrative determinations and shall be subject to review in court as may be provided by law.

**§ 307-7. Penalty.**

- A. Any person who willfully violates this section or any lawful order issued under this section shall, for the first violation, forfeit not less than \$100 nor more than \$1,000.
- B. Any person adjudged to have violated this chapter within five years after having been adjudged to have violated this section, for every violation committed within the five years, shall forfeit not less than \$1,000 nor more than \$10,000.
- C. Payment of a forfeiture under this section shall be stayed during the period in which any appeal may be taken and during the pendency of an appeal.

**Section 2.** The appropriate City officials are hereby authorized and directed to take such action as is necessary to effectuate the terms of this Ordinance.

**Section 3.** All other ordinances and resolutions inconsistent with the provisions of this Ordinance are hereby repealed.

**Section 4.** This Ordinance shall take effect **when the Code of Ordinances is recodified in 2014** and be in force upon its passage and publication as provided by law.

**ADOPTED:**

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Samuel Meyer, President  
Fond du Lac City Council

Attest:

City Attorney:

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Sue L. Strands, City Clerk

Reviewed \_\_\_\_\_