

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

JOHN PARSONS,
LIBERTY AMBULANCE SERVICE, INC.,
a Florida corporation, ROBERT ASSAF,
DIAMOND D RANCH, INC., a Florida
corporation, and MICHAEL GRIFFIN,

CASE NO. 16-2017-CA-001263-XXXX-MA
DIVISION CV-E

Plaintiffs,

vs.

CITY OF JACKSONVILLE, FLORIDA,
a municipal corporation and political
subdivision of the State of Florida,

Defendant.

_____ /

AMENDED COMPLAINT FOR DECLARATORY RELIEF

Plaintiffs, JOHN PARSONS, LIBERTY AMBULANCE SERVICE, INC., ROBERT ASSAF, DIAMOND D RANCH, INC., and MICHAEL GRIFFIN, sue Defendant, CITY OF JACKSONVILLE, FLORIDA, and allege:

INTRODUCTION

1. Plaintiffs bring this action to declare null and void Ordinance 2017-15-E, the so-called "Human Rights Ordinance" or "HRO," as having been adopted in violation of Florida Statutes, the Jacksonville Ordinance Code, and the Rules of the Council of the City of Jacksonville.

2. The numerous violations of state and local law contained in the HRO are not the result of mere careless draftsmanship. Rather, the violations result from the intentional omission

of plain and obvious legal requirements, by the ordinance authors and sponsors, to deceive the Jacksonville public, City Council, and Mayor as to the true contents and scope of the HRO.¹

PARTIES

3. Plaintiff JOHN PARSONS is a natural person who at all material times has resided in Jacksonville, Duval County, Florida.

4. Plaintiff LIBERTY AMBULANCE SERVICE, INC. (“Liberty Ambulance”) is a Florida corporation, which at all material times has maintained a principal address in Jacksonville, Duval County, Florida. Liberty Ambulance provides medical transportation services and has over 180 employees.

5. Plaintiff ROBERT ASSAF is a natural person who at all material times has resided in Jacksonville, Duval County, Florida, and is an owner and officer of Liberty Ambulance.

6. Plaintiff DIAMOND D RANCH, INC. (“Diamond D”) is a Florida corporation, which at all material times has maintained a principal address in Jacksonville, Duval County, Florida. Diamond D is a working horse and cattle ranch, which also hosts weddings and other special events.

7. Plaintiff MICHAEL GRIFFIN is a natural person who at all material times has resided in Jacksonville, Duval County, Florida, and is an owner and operator of Diamond D.

8. Defendant, CITY OF JACKSONVILLE, FLORIDA (“City” or “Jacksonville”), is a municipal corporation and political subdivision of the State of Florida.

¹ The principal author of the HRO confessed, “I did write a new version of the bill that was only five pages long and worked with some of the top lawyers and law firms in the city to get it into a form that was the product of what we’d learned since 2012 about how to message” *Jimmy Midyette shares ups and downs of emotional five-year journey to HRO victory*, Financial News and Daily Record (Feb. 16, 2017, 10:43 AM), http://www.jaxdailyrecord.com/showstory.php?Story_id=549363.

THE ORDINANCE

9. On February 14, 2017, the Jacksonville City Council voted to adopt bill 2017-15, the so-called “Human Rights Ordinance” or “HRO.”

10. The HRO purports to add the categories of “sexual orientation” and “gender identity” to the “protected categories” in the Jacksonville Ordinance Code’s existing nondiscrimination laws affecting employment, housing, and public accommodations.

11. The final version of the HRO, 2017-15-E, ostensibly became law on February 28, 2017, at the conclusion of the regular meeting of the Jacksonville City Council, the Mayor not having signed or vetoed the HRO. A true and correct copy of the HRO, Ordinance 2017-15-E, is attached hereto as Exhibit A.²

12. The HRO provides, in pertinent part:

Section 2. Amending Sections 60.105, 400.101, 400.301, 402.102, 402.107(g)(1), 402.107(g)(3), 402.201, 402.202, 402.203, 402.204, 402.206, 402.210, 402.211, 406.102, 406.104(g)(1), 406.104(g)(3), 406.201, 408.102, 408.204, 408.401, 408.402, 408.403, 408.404, 408.406, and 408.407, Ordinance Code.

The foregoing sections of the Ordinance Code are hereby amended as follows: wherever protected categories are listed, that sexual orientation and gender identity, as defined in Section 3 below, shall be added to the list.

Section 3. Amending Sections 402.107, 406.104, and 408.105, Ordinance Code.

The foregoing sections of the Ordinance Code are hereby amended as follows:

(a) Wherever definitions are provided, the definition of sexual orientation shall be added and shall mean an individual's

² This copy of the final HRO was obtained from the Jacksonville City Council’s website, at <http://cityclts.coj.net/coj/COJbillDetail.asp?F=2017-0015\Current%20Text> (last visited March 1, 2017).

actual or perceived orientation as heterosexual, homosexual, or bisexual.

(b) Wherever definitions are provided, the definition of gender identity shall be added and shall mean the gender-related identity, appearance, or expression of a person. Gender identity may be demonstrated by a person's consistent and uniform assertion of a particular gender identity, appearance or expression, or by any other evidence that a person's gender identity is sincerely held, provided, however, that gender identity shall not be asserted for any improper, illegal or criminal purpose.

Section 4. Exemption for Religious Institutions.

Religious organizations, including but not limited to churches, synagogues, mosques, and schools of religious instruction and non-profit institutions or organizations affiliated therewith, are exempt from the provisions contained herein. For the purposes of Ordinance 2017-15-E, the phrase “religious organization” shall include “religious corporation, association or society.” The term “religious corporation, association or society” shall be interpreted consistent with Section 2000e-(1)(a), United States Code.

* * *

Section 10. Interpretation.

Any ordinance or Charter provision or part of any Ordinance or Charter provision in conflict with the provisions hereof is repealed to the extent of the conflict.

(HRO, Exhibit A, at 3-4, 7.)

13. None of the twenty-eight (28) sections and subsections of the Jacksonville Ordinance Code purportedly amended by Sections 2 and 3 of the HRO are published in the HRO, either in whole or in part. (A true and correct copy of the referenced Ordinance Code Sections is attached hereto as Exhibit B.)

14. None of the religious exemption provisions in Sections 402.209, 402.210(b), 406.302(b), and 408.202(a) of the Jacksonville Ordinance Code, which predate the adoption of the HRO and are different from or in conflict with Section 4 of the HRO, are published in the HRO,

either in whole or in part. (A true and correct copy of the referenced religious exemption provisions of the Ordinance Code is attached hereto as Exhibit C.)

VIOLATIONS OF APPLICABLE LAW

Violations of Florida Statutes

15. The Municipal Home Rule Powers Act, ch. 166, Florida Statutes, governs, *inter alia*, the procedures for adoption of municipal ordinances that amend other ordinances. Section 166.041 provides, in pertinent part:

166.041 Procedures for adoption of ordinances and resolutions.

. . . .

(2) **No ordinance shall be revised or amended by reference to its title only. Ordinances to revise or amend shall set out in full the revised or amended act or section or subsection or paragraph of a section or subsection.**

(3)(a) . . . a proposed ordinance . . . shall, at least 10 days prior to adoption, be noticed once in a newspaper of general circulation in the municipality. The notice of proposed enactment shall state the date, time, and place of the meeting; the title or titles of proposed ordinances; and the place or places within the municipality where such proposed ordinances may be inspected by the public. The notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.

. . . .

(6) The procedure as set forth herein shall constitute a uniform method for the adoption and enactment of municipal ordinances and resolutions and shall be taken as cumulative to other methods now provided by law for adoption and enactment of municipal ordinances and resolutions. By future ordinance or charter amendment, a municipality may specify additional requirements for the adoption or enactment of ordinances or resolutions or prescribe procedures in greater detail than contained herein. However, **a municipality shall not have the power or authority to lessen or reduce the requirements of this section or other requirements as provided by general law.**

(7) Five years after the adoption of any ordinance or resolution adopted after the effective date of this act, no cause of action shall be commenced as to the validity of an ordinance or resolution based on the failure to strictly adhere to the provisions contained in this section. . . . Standing to initiate a challenge to the adoption of an ordinance or resolution based on a failure to strictly adhere to the provisions contained in this section shall be limited to a person who was entitled to actual or constructive notice at the time the ordinance or resolution was adopted. . . .

Fla. Stat. § 166.041 (emphasis added).

16. Sections 2 and 3 of the HRO, which purport to amend twenty-eight (28) sections and subsections of the Jacksonville Ordinance Code, violate the amendatory language requirements of Fla. Stat. § 166.041(2). None of the amended sections or subsections, or paragraphs of any section or subsection, is set out in full (or even in part, or even by mere title) in the HRO.³

17. Section 4 of the HRO, which purports to enact religious exemptions to the HRO which are different from or in conflict with the existing religious exemption provisions of Ordinance Code Sections 402.209, 402.210(b), 406.302(b), and 408.202(a), violates the amendatory language requirements of Fla. Stat. § 166.041(2) because the HRO does not set out in full (or even in part, or even by mere title) any Ordinance Code section or subsection, or paragraph of any section or subsection, so affected.⁴

18. Section 10 of the HRO, to the extent it purports to repeal the existing religious exemption provisions of Ordinance Code Sections 402.209, 402.210(b), 406.302(b), and

³ If the HRO was an exercise of county powers by the City, then it would violate Fla. Stat. § 125.67, which imposes the same notice requirements (“Ordinances to revise or amend shall set out in full the revised or amended section, subsection, or paragraph of a subsection.”). If Fla. Stat. § 125.67 is deemed to apply to the HRO, then the statute provides alternative grounds for the relief requested herein.

⁴ See *supra*, note 3.

408.202(a) as being in conflict with HRO Section 4, violates the amendatory language requirements of Fla. Stat. § 166.041(2) because the HRO does not set out in full (or even in part, or even by mere title) any Ordinance Code section or subsection, or paragraph of any section or subsection, so affected.⁵

19. The HRO also violates the constructive notice requirements of Fla. Stat. § 166.041(3)(a) because the version of the HRO made available for inspection by the public pursuant to the notice of the HRO's proposed enactment was deficient due to the violations of the amendatory language requirements of Fla. Stat. § 166.041(2) set forth above.

20. Neither the publicly noticed nor the enacted versions of the HRO adhered to the requirements of Fla. Stat. § 166.041, either strictly or otherwise, as set forth above.

Violations of Jacksonville Ordinance Code

21. In accordance with Fla. Stat. § 166.041(6), the Jacksonville Ordinance Code specifies additional requirements, and prescribes procedures in greater detail, for the adoption of ordinances that amend existing ordinances:

Sec. 3.105. - Ordinances effective subsequent to effective date of Ordinance Code.

(a) An amendment to an existing provision of the Ordinance Code shall be made in the following language: "Section [or other subdivision] [here indicate number or letter, as the case may be], Ordinance Code is amended to read as follows;" with the amended provisions set out in full.

(b) The addition of a new provision to the Ordinance Code shall be made in the following language: "Title [or "Chapter," with appropriate subdivision, if necessary], Ordinance Code is amended by adding the following new section [or other subdivision] to read as follows:", with the new provision set out in full.

⁵ See *supra*, note 3.

(c) The repeal of a provision of the Ordinance Code shall specifically refer to the subsection, section, part and chapter number.

Sec. 3.105, Jacksonville Ordinance Code.

22. Sections 2 and 3 of the HRO, which purport to amend twenty-eight (28) sections and subsections of the Jacksonville Ordinance Code, violate the heightened amendatory language requirements of Ordinance Code Section 3.105(a). The HRO sections do not use the prescribed Ordinance Code language to introduce the amended provisions, and they do not set out in full (or even in part) the amended provisions.

23. Section 3 of the HRO, which purports to add new definition provisions to Sections 402.107, 406.104, and 408.105 of the Ordinance Code, also violates Ordinance Code Section 3.105(b). Section 3 does not use the prescribed Ordinance Code language to introduce the additional provisions, and it does not set out in full (or even in part) the additional provisions.

24. Section 10 of the HRO, to the extent it purports to repeal the existing religious exemption provisions of Ordinance Code Sections 402.209, 402.210(b), 406.302(b), and 408.202(a) as being in conflict with HRO Section 4, violates Ordinance Code Section 3.105(c) because neither Section 4 nor Section 10 of the HRO specifically refers to any subsection, section, part, or chapter number being repealed.

Violations of Rules of Council

25. Whereas Ordinance Code Section 3.105 specifies requirements in addition to, and prescribes procedures in greater detail than, Fla. Stat. § 166.041 for the adoption of ordinances that amend existing ordinances, the Rules of the Council of the City of Jacksonville prescribe even more detailed procedures than the Ordinance Code:

RULE 3.102 PREPARATION OF BILLS

....

(c) Language. In preparing bills for introduction, the following rules regarding language shall be followed:

(1) In all bills amending current and effective legislation, new words shall be underlined and words to be deleted shall be lined through with strikeout. When a new codified ordinance section or subsection is created, the proposed language will not be underlined. Any ordinance repealing an existing *Ordinance Code* chapter, section or subsection, without the use of strikeouts, shall include language which states that the repealed chapter, section or subsection is placed **on file** with the Legislative Services Division

....

(3) Each section of the bill shall be numbered and contain but one proposition of enactment. Section headings may be provided where necessary to prevent confusion or provide information, but such headings shall be considered for information purposes only and not to constitute a part of the section.

....

City Council Rule 3.102.

26. Sections 2 and 3 of the HRO, which purport to amend twenty-eight (28) sections and subsections of the Jacksonville Ordinance Code, violate the further heightened amendatory language requirements of Council Rule 3.102(c)(1). The HRO sections do not set forth the amended provisions of the Ordinance Code (in whole or in part) with new words underlined.

27. Sections 2 and 3 of the HRO also violate Council Rule 3.102(c)(3) because the only references to the twenty-eight (28) purportedly amended Ordinance Code sections and subsections appear in the headings of Sections 2 and 3, and the headings do not constitute substantive parts of the sections.

28. Section 10 of the HRO, to the extent it purports to repeal the existing religious exemption provisions of Ordinance Code Sections 402.209, 402.210(b), 406.302(b), and

408.202(a) as being in conflict with HRO Section 4, violates Council Rule 3.102(c)(1) because neither Section 4 nor Section 10 of the HRO sets forth the repealed provisions with underlining or strikeout, and neither section includes the required language regarding the filing of repealed provisions.

PLAINTIFFS' INJURIES

29. Each Plaintiff resides or maintains a principal office within the municipality of Jacksonville, Florida.

30. Each Plaintiff, as a resident of the municipality of Jacksonville, Florida, was injured by the City's failures to comply with applicable law in adopting the HRO, as set forth above, including without limitation the City's violations of the amendatory language requirements of Fla. Stat. § 166.041(2) and the constructive notice requirements of Fla. Stat. § 166.041(3)(a), by failing to disclose or otherwise provide notice to the public of the extent of the HRO's purported amendment of twenty-eight (28) sections and subsections of the Jacksonville Ordinance Code.⁶

⁶ In addition to the constructive notice requirements of Fla. Stat. § 166.041(3)(a), the amendatory language requirements of § 166.041(2) also serve a notice function:

"We have also held that the . . . provision was designed to inform both the legislature and the public of the nature and extent of proposed changes in existing laws. For this reason it is required that when a specific section or subsection is being amended it should be republished with the proposed amendment so that an examination of the act itself will reflect the changes contemplated, as well as their impact on the amended statute."

See City of Hallandale v. State ex rel. Zachar, 371 So. 2d 186, 188 (Fla. 4th DCA 1979) (emphasis added) (quoting *Auto Owners Ins. Co. v. Hillsborough County Aviation Auth.*, 153 So. 2d 722, 725 (Fla. 1963)). Under the plain language of Fla. Stat. § 166.041(2), amendatory ordinances must, at a minimum, republish the paragraph of the ordinance section or sub-section being amended. *See City of Hallandale*, 371 So. 2d at 188 ("The explicit terms of the . . . provision contemplate that in a proper case reenactment of a single paragraph of a sub-section is sufficient.") (quoting *Jackson v. Consol. Gov't of City of Jacksonville*, 225 So. 2d 497, 507 (Fla. 1969)). In addition to the minimum requirement to republish the paragraph being amended, "enough of the act being amended must be republished to make the meaning of the provision published intelligible from its language and to insure that no unexpected meaning results from the combination of that language

31. Each Plaintiff, as a person within the municipality of Jacksonville, Florida “who was entitled to . . . constructive notice at the time the [HRO] . . . was adopted,” is within the standing limitations established by Fla. Stat. § 166.041(7) and therefore eligible “to initiate a challenge to the adoption of [the HRO] . . . based on a failure to strictly adhere to the provisions contained in [Fla. Stat. § 166.041].”⁷

32. In addition to the injuries caused by the City’s violations of applicable law, set forth above, the Plaintiffs have suffered, or imminently will suffer, additional injuries as follows:

a. Parsons is a Christian. In accordance with his Christian faith, it is his sincere religious belief that male (man) and female (woman) refer to distinct and immutable biological sexes that are determinable by anatomy and genetics by time of birth. The HRO, among other things, subjects Parsons to violations of his personal bodily privacy, modesty, and dignity, as informed by his religious conscience, by compelling businesses and places of public accommodation which Parsons calls on or patronizes to allow persons who are biologically female, but who identify as male as a matter of “gender identity” or “gender-

and other language in the Act.” *Jackson*, 225 So. 2d at 508 (internal quotation marks omitted). Courts interpreting the language of Fla. Stat. § 166.041(2), governing amendatory city ordinances, look to cases interpreting the counterpart language of the Florida Constitution governing amendatory state statutes, Art. III, § 6, Fla. Const. (formerly Art. III, § 16, Fla. Const.). *See City of Hallandale*, 371 So. 2d at 188 (“Subsection 2, which specifies procedural requirements for the enactment of municipal ordinances, actually embodies Article III, s 16, of the Florida Constitution as it pertains to state statutes.”).

⁷ “Florida follows the majority view whereby measures passed in contravention of notice requirements are invalid (null and void if not strictly enacted pursuant to the requirement of section 166.041).” *Daytona Leisure Corp. v. City of Daytona Beach*, 539 So. 2d 597, 599 (Fla. 5th DCA 1989) (emphasis added) (citing *Fountain v. City of Jacksonville*, 447 So. 2d 353, 355 n.2 (Fla. 1st DCA 1984)); *Coleman v. City of Key West*, 807 So. 2d 84, 85 (Fla. 3d DCA 2001) (“The notices are mandated in order to protect interested persons, who are thus given the opportunity to learn of proposed ordinances; given the time to study the proposals for any negative or positive effects they might have if enacted; and given notice so that they can attend the hearings and speak out to inform the city commissioners prior to ordinance enactment. Noncompliance with the notice provisions takes away or reduces these opportunities.”).

related identity, appearance, or expression,” to enter and use men’s bathrooms and other private facilities while Parsons is also using such facilities. The HRO likewise will subject Parsons’ wife and young daughters to violations of their personal bodily privacy, modesty, and dignity, as informed by their religious consciences, by compelling businesses and places of public accommodation which they call on or patronize to allow persons who are biologically male, but who identify as female as a matter of “gender identity” or “gender-related identity, appearance, or expression,” to enter and use women’s bathrooms and other private facilities while they are also using such facilities.

b. Assaf is a Christian, and he seeks to operate his company, Liberty Ambulance, in accordance with his Christian faith, and to respect the sincere religious beliefs of all other employees of Liberty Ambulance. Assaf’s Christian faith includes the sincere belief that male (man) and female (woman) refer to distinct and immutable biological sexes that are determinable by anatomy and genetics by time of birth. The HRO purports to require Assaf and Liberty Ambulance, as employers, to disregard Assaf’s and other Liberty Ambulance employees’ sincere religious beliefs regarding the nature of men and women in order to accommodate and affirm any “gender identity” or “gender-related identity, appearance, or expression” asserted by an employee, even if inconsistent with that employee’s biological sex, thus violating the religious conscience rights of Assaf and other Liberty Ambulance employees.

c. Griffin is a Christian, and he seeks to operate his company, Diamond D, in accordance with his Christian faith, and to respect the sincere religious beliefs of all other employees of Diamond D. Griffin’s Christian faith includes the sincere belief that God created marriage and has defined it exclusively as the union of one man and one woman.

Griffin and Diamond D consider the natural setting of the ranch property as a beautiful part of God’s creation, and a particularly appropriate setting for celebrating God’s good design for marriage, so they host wedding ceremonies and receptions on the ranch property as part of Diamond D’s operations, which hosting requires substantial participation by Diamond D and its employees in the wedding event. Because Griffin seeks to honor God—including God’s design for marriage—in his operation of Diamond D, Griffin and Diamond D will host only wedding ceremonies and receptions which celebrate the marriage of one man and one woman. The HRO purports to require Griffin and Diamond D to host and participate in, and to compel other Diamond D employees to participate in, same-sex wedding events, which participation would violate the religious conscience rights of Griffin and other Diamond D employees.

d. Griffin’s Christian faith also includes the sincere belief that male (man) and female (woman) refer to distinct and immutable biological sexes that are determinable by anatomy and genetics by time of birth. The HRO purports to require Griffin and Diamond D to disregard the sincere religious beliefs of Griffin and other Diamond D employees regarding the nature of men and women in order to accommodate and affirm any “gender identity” or “gender-related identity, appearance, or expression” asserted by any customer, even if inconsistent with that customer’s biological sex, thus violating the religious conscience rights of Griffin and other Diamond D employees. Furthermore, the HRO compels Griffin and Diamond D to violate the personal bodily privacy, modesty, and dignity of Diamond D employees and customers, including children, as informed by their religious consciences, by purporting to require Diamond D to allow persons who are biologically male, but who identify as female as a matter of “gender identity” or “gender-

related identity, appearance, or expression,” to enter and use women’s bathrooms while female employees and customers are also using such facilities, and vice versa.

e. Under the coercive provisions of the HRO, a Plaintiff’s refusal to violate his conscience or compel an employee of the Plaintiff to violate his or her conscience, as set forth herein, subjects the Plaintiff to enforcement proceedings under the HRO and potential monetary liability, including without limitation liability for fines, penalties, damages, punitive damages, and attorney’s fees.⁸

DECLARATORY RELIEF

33. Despite the violations of law set forth above, the City has taken the position that the HRO is a validly enacted law. Accordingly, the City’s position on the validity of the HRO is adverse to Plaintiffs’ assertion that the HRO is null and void as having been illegally adopted, and there is a bona fide, actual, present, and practical need for a declaration of the validity of the HRO.

34. As shown above, the requested declaration deals with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts.

35. As shown above, some immunity, power, privilege, or right of Plaintiffs is dependent upon the facts or the law applicable to the facts.

36. As shown above, the parties have, or reasonably may have, actual, present, adverse, and antagonistic interests in the subject matter, either in fact or law.

37. As shown above, the antagonistic and adverse interests are all before the Court by proper process.

⁸ Each Plaintiff expressly reserves all legal and equitable defenses to any such enforcement action.

38. As shown above, the relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity.

39. All conditions precedent to the bringing of this action have been satisfied, have been waived, or have otherwise occurred.

WHEREFORE, following a speedy hearing and advancement of the action on the calendar, Plaintiffs demand a declaration that the HRO is null and void; an award of their costs of this action pursuant to Fla. Stat. § 86.081, and as otherwise allowed by law; together with such other and further relief as the Court deems just and proper.

DATED this August 8, 2017.

/s/ Roger K. Gannam
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CERTIFICATE OF SERVICE

I CERTIFY that a copy of this document has been filed electronically through the Florida Courts eFiling Portal this August 8, 2017, and that the following will receive electronic service of the document:

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City of Jacksonville, Florida

/s/ Roger K. Gannam

Roger K. Gannam

Attorney for Plaintiffs

Introduced by Council Members Bowman, Hazouri and Love and amended
by the Finance Committee and amended on the Floor of Council:

ORDINANCE 2017-15-E

AN ORDINANCE CONCERNING EQUAL OPPORTUNITY AND
EXPANDING THE CITY'S EQUAL RIGHTS LAWS TO
PROHIBIT DISCRIMINATION BASED UPON SEXUAL
ORIENTATION AND GENDER IDENTITY, AMENDING
SECTION 60.105 (FUNCTIONS, POWERS AND DUTIES),
ORDINANCE CODE; AMENDING SECTION 400.101
(STATEMENT OF POLICY), *ORDINANCE CODE*; AMENDING
CHAPTER 402 (EQUAL EMPLOYMENT OPPORTUNITY),
ORDINANCE CODE; AMENDING CHAPTER 406 (PUBLIC
ACCOMMODATIONS), *ORDINANCE CODE*; AMENDING
CHAPTER 408 (FAIR HOUSING), *ORDINANCE CODE*;
PROVIDING LEGISLATIVE INTENT; PROVIDING FOR
EXEMPTION FOR RELIGIOUS INSTITUTIONS; PROVIDING
FOR EXEMPTION FOR SMALL EMPLOYERS; PROVIDING
FOR SINGLE-SEX FACILITIES AND DRESS CODES;
AMENDING SECTIONS 402.401, 402.402, 406.403 AND
408.801(G), *ORDINANCE CODE*, TO ELIMINATE
IMPRISONMENT AS A PENALTY; PROVIDING FOR
INTERPRETATION; AUTHORIZING THE OFFICE OF
GENERAL COUNSEL TO MAKE CODIFICATION CHANGES;
PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Jacksonville is an inclusive and
welcoming community, wherein no discrimination should occur; and

WHEREAS, City of Jacksonville routinely competes with other

EXHIBIT A

1 cities and counties, within Florida, in other states and
2 internationally, in the areas of economic development; and

3 **WHEREAS**, the City of Jacksonville seeks to be competitive in
4 attracting new industries, corporate relocations and expansions,
5 medical facilities, educational opportunities, conventions,
6 sporting, entertainment and cultural events, tourism, employee
7 recruitment and retention, and in other important categories; and

8 **WHEREAS**, the City of Jacksonville has great respect for the
9 many diverse religious communities represented by local houses of
10 worship and faith leaders, each of which and all of whom have been
11 carefully considered and provided for herein with appropriate
12 exemptions; and

13 **WHEREAS**, The City of Jacksonville is home to thriving small
14 businesses that form the backbone of the local economy, the needs
15 of which have been carefully considered and provided for herein
16 with appropriate exemptions; and

17 **WHEREAS**, The City of Jacksonville recognizes and appreciates
18 the contributions of the members of its lesbian, gay, bisexual and
19 transgender ("LGBT") community, and finds that a strong LGBT
20 community is a vital thread in the diverse tapestry of this City;
21 now therefore

22 **BE IT ORDAINED** by the Council of the City of Jacksonville:

23 **Section 1. Legislative Findings.**

24 It is hereby ascertained, represented, determined and declared
25 that:

26 (a) The Duval County School Board passed and enacted human
27 rights protections for its students, faculty, administrators, and
28 other employees in June 2012.

29 (b) In March 2016, after leading three community conversations
30 on the topic, Mayor Lenny Curry by departmental directive required
31 the City of Jacksonville to update its equal employment opportunity

1 policy to prohibit discrimination on the basis of an applicant or
2 employee's "sexual orientation, gender identity or expression," a
3 requirement which Mayor Curry also extended to vendors that
4 contract with the City.

5 (c) Following Mayor Lenny Curry's lead, Sheriff Mike Williams
6 extended human rights protections to all employees of the
7 Jacksonville Sheriff's Office. In addition, several key independent
8 authorities, namely JEA, the Jacksonville Transportation Authority,
9 the Jacksonville Port Authority, and the Jacksonville Aviation
10 Authority have done the same.

11 (d) The Department of Defense, including the United States
12 Navy, Marines, Coast Guard, Army, and Air Force, adopted policies
13 and procedures that protect LGBT service-members, and their
14 families, from discrimination.

15 **Section 2. Amending Sections 60.105, 400.101, 400.301,**
16 **402.102, 402.107(g) (1), 402.107(g) (3), 402.201, 402.202, 402.203,**
17 **402.204, 402.206, 402.210, 402.211, 406.102, 406.104(g) (1),**
18 **406.104(g) (3), 406.201, 408.102, 408.204, 408.401, 408.402,**
19 **408.403, 408.404, 408.406, and 408.407, Ordinance Code.**

20 The foregoing sections of the Ordinance Code are hereby
21 amended as follows: wherever protected categories are listed, that
22 sexual orientation and gender identity, as defined in Section 3
23 below, shall be added to the list.

24 **Section 3. Amending Sections 402.107, 406.104, and**
25 **408.105, Ordinance Code.**

26 The foregoing sections of the Ordinance Code are hereby
27 amended as follows:

28 (a) Wherever definitions are provided, the definition of
29 sexual orientation shall be added and shall mean an individual's
30 actual or perceived orientation as heterosexual, homosexual, or
31 bisexual.

1 (b) Wherever definitions are provided, the definition of
2 gender identity shall be added and shall mean the gender-related
3 identity, appearance, or expression of a person. Gender identity
4 may be demonstrated by a person's consistent and uniform assertion
5 of a particular gender identity, appearance or expression, or by
6 any other evidence that a person's gender identity is sincerely
7 held, provided, however, that gender identity shall not be asserted
8 for any improper, illegal or criminal purpose.

9 **Section 4. Exemption for Religious Institutions.**

10 Religious organizations, including but not limited to
11 churches, synagogues, mosques, and schools of religious instruction
12 and non-profit institutions or organizations affiliated therewith,
13 are exempt from the provisions contained herein. For the purposes
14 of Ordinance 2017-15-E, the phrase "religious organization" shall
15 include "religious corporation, association or society." The term
16 "religious corporation, association or society" shall be
17 interpreted consistent with Section 2000e-(1)(a), United States
18 Code.

19 **Section 5. Exemption for Small Employers.**

20 Since 1964, civil and human rights statutes at all levels of
21 government have exempted employers with fewer than 15 employees.
22 The same standard applies in the City of Jacksonville with respect
23 to employment discrimination claims under this provision.

24 **Section 6. Single-Sex Facilities and Dress Codes.**

25 (a) Nothing herein shall prohibit a business or a place of
26 public accommodation from providing single-sex restrooms, locker
27 rooms, shower facilities, bath houses, health spas, dormitory
28 lodging facilities and similar facilities that are by their nature
29 distinctly private.

(b) Nothing herein shall prohibit a business from establishing and enforcing a dress code for its employees, provided that such dress code shall not be based upon sex stereotypes.

Section 7. Amending Chapter 402 (Equal Employment Opportunity), Part 4 (Penalties), Ordinance Code. Chapter 402 (Equal Employment Opportunity), Part 4 (Penalties), *Ordinance Code*, is hereby amended to read as follows:

CHAPTER 402. EQUAL EMPLOYMENT OPPORTUNITY

*** * ***

PART 4. PENALTIES

*** * ***

Sec. 402.401. Violations; penalty.

A person who, knowingly and willfully:

*** * ***

Shall, upon conviction thereof, be punished by fine not to exceed \$500 ~~or by imprisonment for not exceeding 90 days, or by both a fine and imprisonment.~~

Sec. 402.402. Malicious complaints.

A person who files or procures the filing of a complaint with the Commission alleging one or more unlawful employment practices when, at the time of filing the complaint, the person knew or reasonably should have known that the complaint was false and the person filed or procured the filing of the complaint maliciously or with intent to disrupt the business operations of the person against whom the complaint was filed shall, upon conviction thereof, be punished by a fine not to exceed \$500 ~~or by imprisonment not to exceed 90 days, or by both a fine and imprisonment.~~

*** * ***

Section 8. Amending Chapter 406 (Public Accommodations), Part 4 (Procedures for public accommodations complaint), Ordinance

Code. Chapter 406 (Public Accommodations), Part 4 (Procedures for public accommodations complaint), *Ordinance Code*, is hereby amended to read as follows:

CHAPTER 406. PUBLIC ACCOMMODATIONS

* * *

PART 4. PROCEDURES FOR PUBLIC ACCOMMODATIONS COMPLAINT

* * *

Sec. 406.403. Subpoenas.

In support of the above, the following procedures shall apply:

* * *

(e) Any person who, with intent thereby to mislead the Commission or the Director, makes or causes to be made any false entry or statement of fact in any report, account, record or other document submitted to the Commission pursuant to its subpoena or other order, or shall willfully neglect or fail to make or cause to be made full, true and correct entries in such reports, accounts, records or other documents, or shall willfully mutilate, alter, or by any other means falsify any documentary evidence, may be fined by the County Court of Duval County, not more than \$500 ~~or imprisoned not more than 60 days or both.~~

* * *

Section 9. Amending Chapter 408 (Fair Housing), Part 8 (Penalties), Ordinance Code. Chapter 408 (Fair Housing), Part 8 (Penalties), *Ordinance Code*, is hereby amended to read as follows:

CHAPTER 408. FAIR HOUSING

* * *

PART 8. PENALTIES

* * *

Sec. 408.801. Violations; penalty.

A person who, knowingly and willfully:

* * *

(g) ~~Shall, upon conviction thereof, be punished by a fine not to exceed \$500 or by imprisonment for not exceeding 90 days, or by both a fine and imprisonment. A conviction based upon a violation order under this Section shall be a bar to further prosecutions for alleged violations arising out of substantially the same circumstances.~~

* * *

Section 10. Interpretation.

Any ordinance or Charter provision or part of any Ordinance or Charter provision in conflict with the provisions hereof is repealed to the extent of the conflict. Should any part of this Ordinance 2017-15-E be held invalid by a court of competent jurisdiction, the remainder of this Ordinance 2017-15-E shall continue in full force and effect and it shall be presumed that this Ordinance 2017-15-E was enacted without the invalid provision.

Section 11. Authorizing the Office of General Counsel to make Codification changes allowed by this Ordinance. The Office of General Counsel is authorized to take all necessary action in connection with this legislation, to execute the finalization and codification of the legislation to effectuate the purposes of this Ordinance as recommended by the Council Committees and enacted by Council, without further Council action, provided such changes implement the ordinance as approved by 2017-15-E. All such finalization and codification shall be subject to appropriate legal review and approval by the General Counsel, or designee, and all other appropriate official action required by law.

Section 12. Effective Date. This Ordinance shall become effective upon signature by the Mayor or upon becoming effective without the Mayor's signature.

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Form Approved:

/s/ Paige Hobbs Johnston

Office of General Counsel

Legislation Prepared by: Wendy E. Byndloss

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Sec. 60.105. - Functions, powers and duties.

The Commission shall promote and encourage fair treatment and equal opportunity for all persons regardless of race, color, religion, sex, national origin, age, disability, marital or familial status; and shall promote mutual understanding and respect among all economic, social, racial, religious and ethnic groups and shall endeavor to eliminate discrimination against, and antagonism between, religious, racial and ethnic groups and their members. In performing its functions, the Commission shall have the following powers and duties:

- (a) To exercise the powers and authority granted to the Commissions by Chapters 402, 406, and 408 and incidental powers necessary to the complete exercise of the express powers.
- (b) To receive and investigate, hold hearings on, seek to conciliate and act upon complaints alleging an unlawful employment practice under Chapter 402, a discriminatory public accommodations act under Chapter 406, a discriminatory housing practice under Chapter 408 or a violation of a rule under Chapter 60.
- (c) To receive and investigate complaints of, and to initiate its own investigations and hold public hearings to determine the facts about instances of discrimination and intergroup tensions and antagonisms, including discriminatory practices, abuses, or unlawful conduct in obtaining compliance with City or State laws by law enforcement officers or others.

- (d) To cooperate with private organizations and other governmental agencies, on the local, State and national level, having like or kindred functions in performing its functions under this Chapter.
- (e) To enlist the support of and work with civic, labor, religious, professional, and educational organizations and institutions in community activities and programs which further the goals of this Chapter.
- (f) To provide technical assistance to persons, as requested, to further compliance with Chapters 402, 406, and 408.
- (g) To cooperate with the various departments, agencies, and boards at the City, State and national level, in effectuating the purposes of this Chapter.
- (h) To issue subpoenas for, and compel the attendance of witnesses and the production of books, papers, records, documents and other evidence pertaining to any investigation or at a hearing before the Commission. By appropriate resolution, the commission may delegate the power to subpoena to the executive director.
- (i) To administer oaths and take the testimony of any person under oath, such oaths to be administered by the Commission.
- (j) To issue temporary, interim, remedial and affirmative orders and decisions necessary to the complete exercise of its powers and to seek injunctive relief, as necessary.

- (k) To conduct or arrange for research projects and technical studies into and public reports on discrimination and progress in equal opportunity in the community.
 - (l) To recommend methods for elimination of discrimination and intergroup tensions and to use its best efforts to secure compliance with its recommendations.
 - (m) To accept gifts, bequests, grants or other payments, public or private, and to deposit such funds into a self-appropriating trust fund to assist in financing its activities.
 - (n) To submit an annual report of the actions taken and progress made during the past year.
 - (o) To adopt, promulgate, amend and rescind rules and regulations to effectuate the policies and provisions of this Chapter.
 - (p) To recommend legislation to the City Council and modes of executive action to the Mayor that will effectuate the purposes of this Chapter.
 - (q) To carry out the functions assigned to it from time to time by law.
 - (r) To administer and operate the Equal Opportunity Division as provided in Part 2, hereof.
- (Ord. 98-326-E, § 1; Ord. 2003-1058-E, § 21; Ord. 2004-699-E, § 2)

* * *

Sec. 400.101. - Statement of policy.

- (a) *Employment.* The Council hereby declares it to be the policy of the City that personnel shall be employed, compensated, promoted,

transferred, or disciplined without regard to race, color, religion, political affiliation, gender, national origin, disability, age, marital status, or any circumstances other than merit and qualification.

(b) *Equal Opportunity/Equal Access*. The Council declares it to be the policy of the City that the character and quality of its workforce shall be enhanced by an Equal Opportunity/Equal Access Program that promotes and enforces equal opportunity and access to, and advancement within, the City's workforce. The Council declares that a diverse public workforce that is representative of our community is desirable and can be achieved through equal opportunity, equal access, and aggressive recruiting.

(c) *Disability*. The City is committed to a policy of nondiscrimination on the basis of disability in its employment practices, provision of public services, and access to governmental facilities. Qualified individuals with disabilities will be actively recruited to fill City positions. The City recognizes its legal obligation to employ, promote, train, retain and reasonably accommodate disabled persons in City government.

(d) *Harassment*. It is the policy of the City to provide a professional and businesslike work environment free from all forms of employee discrimination, including incidents of harassment.

(1) *Sexual harassment*. No applicant for employment or employee shall be subjected to unsolicited and unwelcome, or conditional sexual overtures or conduct of either a verbal or physical

nature, including patting and touching, nor shall there be allowed to exist a sexually, or gender related hostile, intimidating, or offensive work environment as a result of any such conduct or speech, which would detract from an employee's capacity to successfully perform in the workplace.

(2) *Other forms of harassment.* No employee or applicant for employment shall be subjected to any other form of workplace harassment, whether based upon a state or federally protected status, a physical characteristic or a personal orientation or belief, which might detract from an employee's or candidate's capacity to successfully perform in the workplace. This policy of non-harassment is not intended to limit management's authority to supervise the workforce and to engage in instruction, direction, counseling, training, personal supervision, or discipline.

(e) *Prohibition against Retaliation.* Complainants and their representatives, witnesses, and all other individuals involved in the processing of internal Equal Opportunity/Equal Access complaints shall be free from restraint, interference, coercion, discrimination, or retaliation with respect to their participation.

(f) *Resolution of Complaints.* It is the policy of the City to resolve complaints of discrimination internally, in a prompt and non-adversarial manner, to fairly investigate such complaints, respect

the rights of complainants and the accused, and provide for fair and adequate relief where appropriate.

(Ord. 2004-699-E, § 4)

* * *

Sec. 400.301. - Nature of complaints.

A complaint may be filed by an employee/candidate/applicant alleging discrimination based on race, color, religion, political affiliation, gender, national origin, disability, age, or marital status. Discrimination is defined as the loss of job. status, benefits or opportunities, or the creation or existence of a hostile work environment for reasons that are made unlawful by local, state, or federal law. Complainants and their representatives, witnesses, and all other individuals involved in the processing of internal Equal Opportunity/Equal Access complaints shall be free from restraint, interference, coercion, discrimination, or retaliation with respect to their participation.

(Ord. 2004-699-E, § 4)

* * *

Sec. 402.102. - Legislative findings.

The City finds and declares that:

- (a) The right of equal opportunity of access to employment and the right of fair treatment by employers without discrimination on the basis of race, color, religion, national origin, sex, marital status, age and disability are basic civil rights

guaranteed by the United States Constitution and implemented and enforced by federal law and by the laws of the state.

(b) It is the duty of the city, as the local government most concerned with the welfare and morale of the citizens of Jacksonville, and in accordance with the federal constitution and statutory mandate and the requirements of state law, to undertake to protect, defend and vindicate these rights on behalf of the citizens of Jacksonville.

(c) The enactment of this chapter will promote the public welfare and morale by protecting the citizens of Jacksonville in their interest in personal dignity and esteem, making available to the city their full productive capacity, securing the city against domestic strife and unrest and promoting the interests, rights and privileges of individuals within the city.

(Ord. 78-633-626, § 1; Ord. 83-591-400, § 1; Ord. 1999-1117-E, § 1; Ord. 2004-699-E, § 6)

Note— Former § 152.102.

* * *

Sec. 402.107. - Definitions.

In this Chapter, unless the context otherwise requires:

(a) *Applicant* means an individual who has applied for employment in a job position but who has not yet been hired in that position.

(b) *Bona fide occupational qualification* means a physical, educational, intellectual, economic or other standard, requirement or quality that:

- (1) Is required of persons who apply for or occupy the job position for which it is prescribed; and
- (2) Is related to and necessary for job performance; and
- (3) Cannot be possessed, performed or met by a person excluded from the job position by reason of the qualification.

(c) *Bona fide seniority system* means an employment practice whereby employees are promoted, laid off, rehired, assigned, transferred, offered additional or improved employment opportunities, given increased compensation or other benefits or otherwise dealt with on the basis, wholly or partially, of length of service, which, on its face, does not discriminate and is not intended or designed to disguise discrimination.

(d) *Commission* means the Jacksonville Human Rights Commission established by Chapter 60.

(e) *Disability* means, with respect to an individual:

- (1) A physical or mental impairment which "substantially limits" one or more of the individual's major life activities;
- (2) A record of such an impairment;
- (3) Being regarded as having such an impairment.

For the purpose of this Chapter, a disabled individual is substantially limited if s/he is likely to experience

difficulty in securing, retaining or advancing in employment because of the disability.

(f) *Direct threat*.

(1) The term *direct threat* means a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.

(g) *Discriminate, discrimination and discriminatory* include:

(1) A difference in treatment because of race, religion, national origin, sex, or marital status where the difference is not justified by business necessity or is not a *bona fide* occupational qualification.

(2) Any of the unlawful employment practices hereinafter enumerated.

(3) An unlawful separation, segregation or distinction directly or indirectly against a person because of race, color, religion, national origin, sex or disability.

(4) Participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity's qualified applicant or employee with a disability to the discrimination prohibited by this subchapter (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of this covered entity, or an organization providing training and apprenticeship programs).

(5) Excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association.

(h) *Employee* means an individual employed by an employer but does not include a person elected to public office or a person chosen by the officer to be on the officer's personal staff or an appointee on the policy-making level or an immediate advisor with respect to the exercise of the constitutional or legal powers of the office; provided, that the exclusion set forth in this sentence shall not apply to employees subject to the civil service laws of the City.

(i) *Employer* means a person who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year and includes:

(1) An agent of a person; and

(2) The Consolidated Government of the City, considered as a single entity and not by its constituent agencies;

But does not include:

(1) The United States, a corporation wholly owned by the government of the United States or an agency of the United States;

(2) The State of Florida or any of its agencies;

(3) The governments of the Second, Third, Fourth or Fifth Urban Services Districts; or

(4) A *bona fide* membership club (other than a labor organization) which is exempt from taxation under Section 501(c) of the Internal Revenue Code of 1954 [26 U.S.C. 501(c)].

(j) *Employment agency* means a person regularly undertaking, either with or without compensation, to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

(k) *Employment decision* includes hiring, layoff, termination, discharge, rehiring, upgrading, promotion, demotion, transfer and similar actions.

(l) *Employment practice* means a method of operation used by a employer, including recruitment, recruitment advertising, use of selection devices, hiring, layoff, termination, rehiring, upgrading, demotion, transfer, rates of pay or other forms of compensation and use of facilities.

(m) *Executive Director* means the Executive Director of the Jacksonville Human Rights Commission as provided in Chapter 60.

(n) *Labor organization* includes:

(1) An organization of any kind, an agency or employee representation committee, group, association or plan in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours or other terms or conditions of employment.

(2) A conference, general committee, joint or system board or joint council which is subordinate to a state, national or international labor organization.

(3) An agent of a labor organization.

(o) Reasonable accommodation may include:

(1) Making existing facilities used by the employees readily accessible to and usable by individuals with disabilities; and

(2) Job structuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modifications of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(3) Modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; or

(4) Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed that enable a qualified individual with a disability to perform functions of that position; or

(5) Modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities,

(p) *Qualified individual with a disability:*

(1) The term *qualified individual with a disability* means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position; that such individual holds or desires. For the purposes of this Chapter, consideration shall be given to the employer's judgment as to what functions of a job are essential and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

(q) *Substantially limits:* The term *substantially limits* means:

- (1) Unable to perform a major life activity that the average person in the general population can perform; or
- (2) Significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.

(r) Training program means any plan containing terms and conditions for qualification, recruitment, selection, employment, training of employees to:

- (1) Enter a specific trade or occupation after completion of a specified training program; or
- (2) Offer a person already either partially or wholly trained in a specified trade or occupation an opportunity to advance him/herself after completion of a specified training program.

(s) *Undue hardship*:

- (1) In general. The term *undue hardship* means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subparagraph (2).
- (2) Factors to be considered. In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include:
 - (i) The nature and cost of the accommodation needed under this Chapter;
 - (ii) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodations; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility.

- (iii) The overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and
- (iv) The type of operation or operations of the covered entity, including the composition, structure and functions of the work force of such entity; the geographic separateness administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

(Ord. 78-633-626, § 1; Ord. 83-591-400, § 1; Ord. 1999-1117-E, § 1)

Note— Former § 152.107.

* * *

Sec. 402.201. - Employees.

Except as provided in Section 402.208, it is an unlawful employment practice for an employer:

- (a) To fail or refuse to hire, to discharge or otherwise to discriminate against an individual with respect to compensation or the terms, conditions or privileges of employment because of race, color, religion, sex, marital status, national origin, age or disability.
- (b) To limit, segregate or classify employees or applicants in a way which would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect the status of an employee or applicant because of race, color,

religion, sex, marital status, national origin, age or disability.

- (c) To refuse to make reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or
- (d) To deny employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;
- (e) To use qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity; and
- (f) To fail to select and administer tests concerning employment in the most effective manner to ensure that when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever

other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

(Ord. 78-633-626, § 1; Ord. 83-591-400, § 1; Ord. 1999-1117-E, § 1)

Note— Former § 152.201.

Sec. 402.202. - Employment agencies.

Except as provided in Section 402.208, it is an unlawful employment practice for an employment agency:

(a) To fail or refuse to refer for employment or otherwise to discriminate against an individual because of race, color, religion, sex, marital status, national origin, age or disability.

(b) To classify or refer for employment an individual on the basis of race, color, religion, sex, marital status, national origin, age or disability.

(Ord. 78-633-626, § 1; Ord. 83-591-400, § 1; Ord. 1999-1117-E, § 1)

Note— Former § 152.202.

Sec. 402.203. - Labor organizations.

Except as provided in Section 402.208, it is an unlawful employment practice for a labor organization:

(a) To exclude or to expel from membership or otherwise to discriminate against a member or applicant for membership

because of race, color, religion, sex, marital status, national origin, age or disability.

(b) To limit, segregate or classify its membership or applicants for membership or to classify or fail or refuse to refer for employment an individual otherwise qualified for membership in a way which would:

(1) Deprive an individual of employment opportunities; or

(2) Limit the employment opportunities or otherwise adversely affect the status of an employee or of an applicant for employment;

Because of race, color, religion, national origin, sex, marital status, age or disability.

(c) To cause or attempt to cause an employer to discriminate against an individual in violation of this Chapter.

(Ord. 78-633-626, § 1; Ord. 83-591-400, § 1; Ord. 1999-1117-E, § 1)

Note— Former § 152.203.

Sec. 402.204. - Training programs.

Except as provided in Section 402.208, it is an unlawful employment practice for an employer, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training, programs to discriminate against an individual because of race, color, religion, sex, marital status, national origin, age or disability in admission to or employment in a program established to provide apprenticeship or other training.

(Ord. 78-633-626, § 1; Ord. 83-591-400, § 1; Ord. 1999-1117-E, § 1)

Note- Former § 152.204.

* * *

Sec. 402.206. - Other discriminatory practices.

It is an unlawful employment practice for an employer, labor organization, employment agency or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training, programs to print or publish or cause to be printed or published a notice or advertisement:

- (a) Relating to employment by the employer or membership in or a classification or referral for employment by the labor organization; or
- (b) Relating to a classification or referral for employment by the employment agency; or
- (c) Relating to admission to or employment in a program established to provide apprenticeship or other training by the joint labor-management committee;

Indicating in any of these areas a preference, limitation, specification or discrimination based on race, color, religion, sex, national origin, age or disability; provided, that a notice or advertisement may indicate a preference, limitation, specification or discrimination based on religion, sex, marital status or national origin when the factor or qualification is a *bona fide* occupational qualification for employment.

(Ord. 78-633-626, § 1; Ord. 83-591-400, § 1; Ord. 1999-1117-E, § 1)

Note— Former § 152.205.

* * *

Sec. 402.210. - Exceptions.

It is not an unlawful employment practice:

- (a) For an employer to hire and employ an employee, for an employment agency to classify or refer for employment an individual, for a labor organization to classify its membership or to classify or to refer for employment an individual or for an employer, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ an individual in the program on the basis of religion, sex, marital status, national origin, age or disability where religion, sex, marital status, national origin, age or disability is a *bona fide* occupational qualification reasonably necessary to the normal operation of that particular business enterprise.
- (b) For a school, college, university or other educational institution to hire and employ an employee of a particular religion if the school, college, university or other educational institution is, in whole or substantial part, owned, supported, controlled or managed by a particular religion or by a particular religious corporation, association or society or if the curriculum of the school, college, university or other educational institution is directed toward the propagation of a particular religion.

(c) For an employer to fail or refuse to hire and employ an individual for a position, for an employer to discharge an individual from a position, for an employment agency to fail or refuse to refer an individual for employment in a position or for a labor organization to fail or refuse to refer an individual for employment in a position if:

(1) The occupancy of the position or access to the premises in or upon which a part of the duties of the position is performed or is to be performed is subject to a requirement imposed in the interest of the national security of the United States under a security program in effect pursuant to or administered under a statute of the United States or an executive order of the President; and

(2) The individual has not fulfilled or has ceased to fulfill that requirement.

(d) For an employer to terminate, discharge or lay off an employee because the employee was convicted under Section 402.402 of filing a malicious complaint against the employer.

(Ord. 78-633-626, § 1; Ord. 83-591-400, § 1; Ord. 1999-1117-E, § 1)

Note— Former § 152.208.

Sec. 402.211. - Seniority or merit systems.

Notwithstanding any other provisions of this Part, it is not an unlawful employment practice for an employer:

(a) To apply different standards of compensation or different terms, conditions or privileges of employment pursuant to a

bona fide seniority or merit system or a system which measures earning by quantity or quality or production or to employees who work in different locations, if the differences are not the result of an intention to discriminate because of race, color, religion, sex, marital status, national origin, age or disability.

(b) To give and act upon the results of a professionally developed ability test if the test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex, marital status, national origin, age or disability.

(c) To differentiate upon the basis of sex in determining the amount of wages or compensation paid or to be paid to employees of the employer if the differentiation is authorized by the provisions of Section 6(d) of the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 206(d)].

(Ord. 78-633-626, § 1; Ord. 83-591-400, § 1; Ord. 1999-1117-E, § 1)

Note— Former § 152.209.

* * *

Sec. 406.102. - Declaration of policy.

The City declares it to be the policy of the City to provide, within the limits of the Constitution of the United States, access to public accommodations for all people within the City. The availability of access to public accommodations without discrimination on the basis of race, color, religion, ancestry, to

national origin, age, sex, pregnancy, disability, marital status, or familial status is a matter of concern to the people of Jacksonville and more particularly of concern to the City in providing for the health, welfare, safety and morals of the people of Jacksonville.

(Ord. 2004-699-E, § 15)

* * *

Sec. 406.104. - Definitions.

In this Chapter, unless the context otherwise requires:

- (a) *Commission* means the Jacksonville Human Rights Commission.
- (b) *Communication* is defined as written materials including electronic mail, when a complaint has been filed.
- (c) *Complainant* means a person who files a complaint under this chapter.
- (d) *Contract* is defined as an agreement between two or more parties that creates in each party a duty to do or not do something and a right to performance of the other's duty or a remedy for the breach of the other's duty. The parties must have the necessary capacity, as to age or mental soundness. The agreement must have a lawful, not criminal object to be valid and enforceable.
- (e) *Director* means the Executive Director of the Jacksonville Human Rights Commission.
- (f) *Disability*:
 - (1) A physical or mental impairment which substantially limits one or more of a person's major life activity;

(2) A record of such impairment; or

(3) being regarded as having such an impairment.

The term does not include current, illegal use of or addiction to a controlled substance (as defined in § 102 of the Controlled Substances Act (21 U.S.C. 802)).

(g) *Discriminate, discrimination, and discriminatory* include:

(1) A difference in treatment because of race, color, religion, ancestry, national origin, age, sex, pregnancy, disability, marital status, or familial status, where the difference is not justified by business necessity or is not a bona fide qualification.

(2) Any of the discriminatory practices hereinafter enumerated.

(3) An unlawful separation, segregation or distinction directly or indirectly against a person because of race, color, religion, ancestry, national origin, age, sex, pregnancy, disability, marital status, or familial status.

(h) *Mediation* means the attempted resolution of issues raised by a complaint or by the investigation of the complaint through informal negotiations involving the complainant, respondent, and the Commission.

(i) *Probable Cause Panel* is defined as a three- to five-person panel composed of the members from the Public Accommodations Subcommittee of the Commission appointed to make findings related to probable cause upon the completion of the investigation of a duly filed complaint.

(j) *Respondent* means any entity whom has been charged with a violation of this chapter and who meets the requirements under this chapter as one who provides a public accommodation.

(k) *Settlement agreement* means a written agreement setting forth the resolution of the issues in mediation.

(Ord. 2004-699-E, § 15)

* * *

Sec. 406.201. - Unlawful practice.

It shall be unlawful to engage in any of the following acts because of an individual's race, color, religion, ancestry, national origin, age, sex, pregnancy, disability, marital status, or familial status.

(a) To refuse, withhold or deny to a person any services, access, advantages, goods, facilities or privileges of a public accommodation including the extension of credit; or

(b) To publish, circulate, issue, display, post or mail and communication, notice or advertisement to the effect that accommodations, services, goods advantages, facilities are denied to a person or that the patronage of such person is unwelcome, objectionable, or unacceptable.

(Ord. 2004-699-E, § 15)

* * *

Sec. 408.102. - Declaration of policy.

The City declares it to be the policy of the City to provide, within the limits of the Constitution of the United States, fair housing for all people within the City. The availability of adequate

housing without discrimination on the basis of race, color, religion, national origin, sex, handicap, familial status or marital status is a matter of concern to the people of Jacksonville and more particularly of concern to the City in providing for the health, welfare, safety and morals of the people of Jacksonville.

(Ord. 96-1089-659, § 1; Ord. 2004-699-E, § 16)

* * *

Sec. 408.105. - Definitions.

In this Chapter, unless the context otherwise requires:

(a) *Aggrieved person* includes any person who:

(1) Claims to have been injured by a discriminatory housing practice; or

(2) Believes that he/she will be injured by a discriminatory housing practice that is about to occur.

(b) *Building contractor* includes any person engaged in the designing, redesigning, construction, reconstructing, repairing or remodeling of any housing facility within the City.

(c) *Commission* means the Jacksonville Human Rights Commission established by Chapter 60.

(d) *Complainant* means a person including the Commission who files a complaint under this Chapter.

(e) *Conciliation* means the attempted resolution of issues raised by a complaint or by the investigation of the complaint through

informal negotiations involving the aggrieved person, the respondent, and the Commission.

(f) *Conciliation agreement* means a written agreement setting forth the resolution of the issues in conciliation.

(g) *Discriminatory housing practice* shall mean any act that is unlawful under 42 U.S.C. 3604, 3605, 3606, 3607 or 3617.

(h) *Dwelling* means:

(1) Any building, structure, or part of a building or structure that is occupied as, or designed or intended for occupancy as, a residence by one or more families; or

(2) Any vacant land that is offered for sale, or lease for the construction or location of a building, structure, or part of a building or structure described by paragraph (1) above.

(i) *Executive Director* means the Executive Director of the Jacksonville Human Rights Commission.

(j) *Family* means one individual living alone and two or more individuals living together as a unit.

(k) *Familial status* means one or more individuals (who have not attained the age of 18 years) being domiciled with:

(1) A parent or another person having legal custody of such individual or individuals; or

(2) The designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

(l) *General counsel* means the General Counsel of the City of Jacksonville.

(m) *Handicap* means a mental or physical impairment that substantially limits at least one major life activity, a record of such impairment, or being regarded as having such an impairment. The term does not include current, illegal use of or addiction to a controlled substance (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802)). In this Part, a reference to "an individual with a handicap" or to "handicap" does not apply to an individual because that individual is a transvestite.

(n) *Housing facility* means and includes any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as the home, living quarters or residence of one or more families, and any vacant land which is offered for sale or lease for the construction or location thereof of any such building, structure or portion thereof.

(o) *Person* includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in

cases under 11 U.S.C. 101 et seq. (Bankruptcy Code), receivers and fiduciaries.

(p) *Real estate broker* includes any person duly licensed as a real estate broker under the laws of the state.

(q) *Real estate salesperson* includes:

(1) Any person, whether licensed or not, who:

(i) For a fee, commission, salary or other valuable consideration or collecting the same, lists, sells, purchases, exchanges, rents, leases, or otherwise transfers real estate, or improvements thereon, including options, or

(ii) Negotiates, or attempts to negotiate, such an activity or

(iii) Advertises or holds himself out as engaged in such activities, or

(iv) Negotiates, or attempts to negotiate, a loan secured by a mortgage or other encumbrance, upon a transfer of real estate, or

(v) Is engaged in the business of charging an advance fee or contracting for collection of a fee in connection with a contract whereby he undertakes to promote the sale, purchase, exchange, lease, rental or other transfer of real estate through its listing in a publication issued primarily for such purposes; and

(2) A person employed by or acting on behalf of any of these.

(r) *To rent* includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(s) *Respondent* means

(1) The person or other entity accused in a complaint of a violation of this Part; or

(2) Any person identified as an additional or substitute respondent under this Part of an additional or substitute respondent.

(Ord. 96-1089-659, § 1; Ord. No. 2004-699-E, § 18)

* * *

Sec. 408.204. - Appraisal exemption.

This Part does not prohibit a person engaged in the business of furnishing appraisals of real property from taking into consideration factors other than race, color, religion, sex, handicap, familial status, or national origin.

(Ord. 96-1089-659, § 1)

* * *

Sec. 408.401. - Sale or rental.

(a) A person may not refuse to sell or to rent after the making of a bona fide offer, refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny a dwelling to any person because of race, color, handicap, religion, sex, familial status, or national origin.

(b) A person may not discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in providing services or facilities in connection with the sale or rental, because of race, color, handicap, religion, sex, familial status, or national origin.

(c) This Section does not prohibit discrimination against a person because the person has been convicted by any court of competent jurisdiction of the illegal manufacture and distribution of a controlled substance as defined in 21 U.S.C. 802.

(Ord. 96-1089-659, § 1)

Sec. 408.402. - Publication.

A person may not make, print, or publish or cause to be made, printed, or published any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, national origin, or an intention to make such a preference, limitation, or discrimination.

(Ord. 96-1089-659, § 1)

Sec. 408.403. - Falsely representing availability.

A person may not represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that a dwelling is not available for inspection, sale or rental when the dwelling is available for inspection, sale or rent.

(Ord. 96-1089-659, § 1)

Sec. 408.404. - Entry into neighborhood.

A person may not, for profit, induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into a neighborhood of a person of a particular race, color, religion, sex, handicap, familial status, or national origin.

(Ord. 96-1089-659, § 1)

* * *

Sec. 408.406. - Residential real estate related transaction.

(a) A person whose business includes engaging in residential real estate related transactions may not discriminate against a person in making a real estate related transaction available or in the terms or conditions of a real estate related transaction because of race, color, religion, sex, handicap, familial status, or national origin.

(b) In this Section, "residential real estate related transaction" means:

(1) Making or purchasing loans or providing other financial assistance:

(A) To purchase, construct, improve, repair, or maintain a dwelling; or

(B) Secured by residential real estate; or

(2) Selling, brokering, or appraising residential real property.

(Ord. 96-1089-659, § 1)

Sec. 408.407. - Brokerage services.

A person may not deny any person access to, or membership or participation in, a multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or discriminate against a person in the terms or conditions of access, membership, or participation, on the basis of race, color, religion, national origin, sex, familial status, or handicap.

(Ord. 96-1089-659, § 1)

Sec. 402.209. - Exemptions.

This Part 2 does not apply to: A religious corporation, association or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by the corporation, association or society of its religious activities.

(Ord. 78-633-626, § 1; Ord. 83-591-400, § 1; Ord. 1999-1117-E, § 1; Ord. 2004-699-E, § 10)

Note— Former § 152.207.

Sec. 402.210. - Exceptions.

It is not an unlawful employment practice:

- (a) For an employer to hire and employ an employee, for an employment agency to classify or refer for employment an individual, for a labor organization to classify its membership or to classify or to refer for employment an individual or for an employer, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ an individual in the program on the basis of religion, sex, marital status, national origin, age or disability where religion, sex, marital status, national origin, age or disability is a *bona fide* occupational qualification reasonably necessary to the normal operation of that particular business enterprise.
- (b) For a school, college, university or other educational institution to hire and employ an employee of a particular

religion if the school, college, university or other educational institution is, in whole or substantial part, owned, supported, controlled or managed by a particular religion or by a particular religious corporation, association or society or if the curriculum of the school, college, university or other educational institution is directed toward the propagation of a particular religion.

(c) For an employer to fail or refuse to hire and employ an individual for a position, for an employer to discharge an individual from a position, for an employment agency to fail or refuse to refer an individual for employment in a position or for a labor organization to fail or refuse to refer an individual for employment in a position if:

(1) The occupancy of the position or access to the premises in or upon which a part of the duties of the position is performed or is to be performed is subject to a requirement imposed in the interest of the national security of the United States under a security program in effect pursuant to or administered under a statute of the United States or an executive order of the President; and

(2) The individual has not fulfilled or has ceased to fulfill that requirement.

(d) For an employer to terminate, discharge or lay off an employee because the employee was convicted under Section 402.402 of filing a malicious complaint against the employer.

(Ord. 78-633-626, § 1; Ord. 83-591-400, § 1; Ord. 1999-1117-E, § 1)

Note— Former § 152.208.

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Sec. 406.302. - Limitations and exemptions.

The following limitations and exemptions shall apply:

- (a) The provision of this Chapter shall not apply to a private club or other establishments not in fact open to the public, except to the extent that the facilities of such establishments are made available to the customers or patrons of such an establishment.
- (b) Nothing in this Chapter shall prohibit a religious organization, association or society, or any nonprofit institution or organization, operating, supervised or controlled by or in conjunction with a religious organization, association or society, from limiting facilities and accommodations which it owns or operates for other than commercial purpose to persons of the same religion, or from giving preference to such persons;
- (c) Nothing in this Chapter shall prohibit the limiting of the use of kindergartens, nurseries, day care centers, theaters and movie theaters to persons of a particular age group.

(Ord. 2004-699-E, § 15)

* * *

Sec. 408.202. - Religious organization and private club exemption.

(a) This Part does not prohibit a religious organization, association, or society, or a nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, from:

- (1) Limiting the sale, rental, or occupancy of dwellings that it owns or operates for other than a commercial purpose to persons of the same religion, unless membership in the religion is restricted on account of race, color, or national origin; or
- (2) Giving preference to persons of the same religion, unless membership in the religion is restricted because of race, color, or national origin.

(b) This Part does not prohibit a private club not open to the public that, as an incident to its primary purpose, provides lodging that it owns or operates for other than a commercial purpose from limiting the rental or occupancy of that lodging to its members or from giving preference to its members.

(Ord. 96-1089-659, § 1)