

ORDINANCE NO. O2016.25

**AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF TEMPE, ARIZONA, AMENDING
CHAPTER 2, TEMPE CITY CODE, RELATING TO
ADMINISTRATION, BY AMENDING ARTICLE
VIII RELATING TO HUMAN RELATIONS.**

WHEREAS, the City of Tempe is comprised of various and diverse individuals and groups of people; and

WHEREAS, the City of Tempe values this diversity and wishes to encourage all persons to contribute to, fully participate in and contribute to the cultural, social, spiritual and commercial life and activities in Tempe; and

WHEREAS, existing practices in the City of Tempe already reflect anti-discriminatory practices among and toward its employees, contractors and vendors; and

WHEREAS, the City of Tempe desires to improve upon its existing process concerning City contractors and vendors, that will observe and protect the dignity, rights and privacy, and interests of all parties involved to the maximum extent possible; and

WHEREAS, the purpose of this Ordinance is to make the appropriate conforming changes to the Tempe City Code;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1. That Chapter 2, Administration, Article VIII – Human Relations of the Tempe City Code is hereby amended to read:

ARTICLE VIII

HUMAN RELATIONS

Sec. 2-600. Definitions.

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

Adult means a person who has attained eighteen (18) years of age.

State law reference—similar provisions, A.R.S., § 1-215(3).

Contractor means ~~any person who has a contract with the city~~ A PERSON OR FIRM IN THE BUSINESS OF SELLING OR OTHERWISE PROVIDING PRODUCTS, MATERIALS OR SERVICES, THAT HAS GONE THROUGH A COMPETITIVE SOLICITATION PROCESS WITH THE CITY OF TEMPE, AND BEEN AWARDED A CONTRACT WITH THE CITY OF TEMPE THROUGH A FORMAL AWARD BY THE CITY COUNCIL. THIS DOES NOT INCLUDE A COOPERATIVE PROCUREMENT CONDUCTED BY, OR ON BEHALF OF, MORE THAN ONE ELIGIBLE PUBLIC PROCUREMENT UNIT.

Cross reference-Procurement, Ch. 26a.

Discrimination means to exclude individuals from an opportunity or participation in any activity because of race, color, gender, gender identity, sexual orientation, religion, national origin, familial status, age, disability, or United States military veteran status, and occurs whenever similarly situated individuals of a different group are accorded different and unequal treatment in the context of a similar situation.

Employee means an individual employed for pay to perform services for an employer covered by this article and whose activities are controlled and directed by the employer, for whom services are being performed.

Employer means a person doing business within the city who has one (1) or more employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year, and any agent of such person. This definition excludes:

- (1) The United States or any department or agency thereof, a corporation wholly owned by the United States or any Indian tribe;
- (2) The State of Arizona or any department or agency thereof, except for any political subdivision of the State of Arizona, including any community college district or high school or elementary school district;

- (3) A bona fide membership club (other than a labor organization) that is exempt from taxation under the Internal Revenue Code of 1986 (as amended from time to time);
- (4) A religious organization; or,
- (5) An expressive association whose employment of a person protected by this article would significantly burden the association's rights of expressive association.

State law reference—similar provisions, A.R.S., § 23-613.

Familial status means the state of having one or more minor children under the age of eighteen (18) being domiciled with: a parent, guardian or another person having legal custody; the designee of such parent, guardian or another person having legal custody with written permission; or, a foster parent or other person with whom a minor child is placed by court order. This definition includes pregnant women and people securing custody of children under the age of eighteen (18) or disability.

Cross reference—Fair housing, Ch. 22, Art. V.

Gender identity means an individual's various attributes as they are understood to be masculine or feminine and shall be broadly interpreted to include pre- and post-operative gender individuals, as well as other persons who are or are perceived to be transgendered; as well as gender expression, including external characteristics and behaviors that are socially defined as either masculine or feminine.

MEMBERSHIP CLUB OR BONA FIDE MEMBERSHIP CLUB MEANS A PRIVATE CLUB NOT OPEN TO THE PUBLIC THAT IS SUPPORTED BY MEMBERSHIP FEES, DUES, AND ASSESSMENTS, AND QUALIFIES FOR EXEMPTION BY THE INTERNAL REVENUE SERVICE; AND, THAT IS NOT ORGANIZED FOR THE PURPOSE OF EVADING COMPLIANCE WITH THIS ARTICLE.

Place of public accommodation means facilities, establishments, accommodations, services, commodities, or use offered to or for use by the general public, including public places where food or beverages are offered for sale, public places operated for temporary lodging, use or accommodation of those seeking health or recreation and all establishments offering such goods or facilities, and entities soliciting patronage from the general public, except for religious organizations or expressive associations whose inclusion of a person protected by this article would significantly burden the association's rights of expressive association. This does not include any private club or any place which is in its nature distinctly private.

Sexual orientation means an enduring pattern of emotional, romantic, or sexual attractions to men, women, or both sexes, as well as the genders that accompany them,

including the perception or status of an individual's same sex, opposite sex, or bisexual orientation.

Social club means an organization composed of people who voluntarily meet on a regular basis for a mutual purpose other than for educational, religious, charitable, or financial pursuits. This includes any group that has members who meet for a social, literary, or political purpose. This definition does not include any club conducted for the purpose of evading this article.

Vendor means a person or firm in the business of selling or otherwise providing products, materials or services, THAT HAS GONE THROUGH A COMPETITIVE SOLICITATION PROCESS WITH THE CITY OF TEMPE, AND BEEN AWARDED A CONTRACT WITH THE CITY OF TEMPE THROUGH A FORMAL AWARD BY THE CITY COUNCIL. THIS DOES NOT INCLUDE A COOPERATIVE PROCUREMENT CONDUCTED BY, OR ON BEHALF OF, MORE THAN ONE ELIGIBLE PUBLIC PROCUREMENT UNIT.

Sec. 2-601. Policy.

It is declared to be the policy for the citizens of Tempe, Arizona, to be free from discrimination in public accommodations, employment, and housing, and contrary to public policy and unlawful to discriminate against any person on the basis of race, color, gender, gender identity, sexual orientation, religion, national origin, familial status, age, disability, or United States military veteran status, in places of public accommodation, employment, and housing; and contrary to the policy of the city and unlawful for vendors and contractors doing business with the city to discriminate, as set forth in this article.
(Ord. No. O2014.10, 2-27-14)

Sec. 2-602. Administrative provisions.

(a) *Powers and duties.* Administration, authority and responsibility for administering this article shall rest with the city manager.

- (1) The city manager or designee may delegate functions, duties and responsibilities for investigation, mediation, and conciliation and may otherwise act to assist the city in the administration of this article;
- (2) The city manager or designee shall administer programs and activities as authorized herein to further the purposes of this article, in compliance with federal, state and local laws, and shall work with and enter into agreements as approved by the city council, with the United States Equal Employment Opportunity Commission, the United States Department of Housing and Urban Development, and other agencies of the United States or State of Arizona that govern or affect discriminatory practices as defined by this article, including the acceptance of funds from such agencies and the carrying out of such covenants and conditions of such agreements, in compliance with this article; and

- (3) The city manager or designee shall cooperate with and render assistance to, as reasonably requested, other public or private agencies, organizations and entities, to formulate or carry out programs to further the prevention or elimination of discriminatory practices as defined in this article.

(b) The city attorney shall be authorized to take such actions as authorized herein to carry out the duties as set forth in this article.

(Ord. No. O2014.10, 2-27-14)

Sec. 2-603. Unlawful practices.

The following shall constitute a violation of this article:

- (1) For any owner, operator, lessor, manager, agent or employer of any place of public accommodation to discriminate against any person, including to restrict or refuse access on the basis of race, color, gender, gender identity, sexual orientation, religion, national origin, familial status, age, disability, or United States military veteran status;
- (2) For an employer, because of race, color, gender, gender identity, sexual orientation, religion, national origin, familial status, age, disability, or United States military veteran status, to refuse to hire or employ or bar or discharge from employment any person, or to discriminate against such person in compensation, conditions, or privileges of employment;
- (3) For a labor organization, because of race, color, gender, gender identity, sexual orientation, religion, national origin, familial status, age, disability, or United States military veteran status, to exclude, expel, limit or restrict from its membership any person, or to provide segregated membership or otherwise discriminate in any manner against any of its members, applicants or employers;
- (4) For any owner or lessor to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities therewith, because of race, color, gender, gender identity, sexual orientation, religion, national origin, familial status, age, disability, or United States military veteran status;
- (5) For a city vendor or city contractor, because of race, color, gender, gender identity, sexual orientation, religion, national origin, familial status, age, disability, or United States military veteran status, to refuse to hire or employ or bar or discharge from employment any person, or to discriminate against such person in compensation, conditions, or privileges of employment. City vendors and contractors OF FIFTEEN (15) EMPLOYEES OR MORE, shall provide a copy of its

antidiscrimination policy to the city's procurement officer, to confirm compliance with this article. EMPLOYERS HAVING FOURTEEN (14) OR LESS EMPLOYEES MAY ~~or~~ attest in writing to compliance with this article; or

- (6) For any person to coerce, intimidate, threaten, or interfere with any person in the exercise and enjoyment of, or on account of any aid or encouragement of any right granted or protected under this article.

(Ord. No. O2014.10, 2-27-14)

Sec. 2-604. Exclusions.

This article shall not apply to:

- (1) A religious organization;
- (2) An expressive organization whose employment of a person protected by this article would significantly burden the association's rights of expressive association;
- (3) A bona fide membership club (other than a labor organization) that is exempt from taxation under the Internal Revenue Code of 1986 (as amended from time to time), as defined in this article; or
- (4) A social club, as defined in this article.

(Ord. No. O2014.10, 2-27-14)

Sec. 2-605. Fair housing.

(a) It shall constitute a violation of this article to refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of residential real property to any person because of race, color, gender, gender identity, sexual orientation, religion, national origin, familial status, age, disability, or united states military veteran status, within the legal jurisdiction of the city.

(b) It shall constitute a violation of this article to refuse any provision of services or facilities, privileges or conditions of the sale or rental of residential real property to any person because of race, color, gender, gender identity, sexual orientation, religion, national origin, familial status, age, disability, or united states military veteran status, within the legal jurisdiction of the city.

(c) Nothing in this article shall exclude or deny housing designated for senior living or for the disabled, or as otherwise designated or directed by the united states department of housing and urban development or the State of Arizona.

(Ord. No. O2014.10, 2-27-14)

Sec. 2-606. Penalties, process and appeals.

(a) Any person found responsible of violating any section or subsection of this article shall be punished by the imposition of a civil sanction of a fine of one thousand five hundred dollars (\$1,500) and not more than two thousand five hundred dollars (\$2,500) plus applicable surcharges, for each violation.

(b) Any person claiming to be aggrieved of a violation of this article may file with the city manager or his designee of the city, a written charge signed by the complainant and verified by such signature, within forty-five (45) CALENDAR days of the alleged violation occurring. The charge shall set forth facts upon which it is based and shall identify the person charged (hereinafter "respondent"). The city manager or designee shall furnish the respondent with a copy of the charge and shall promptly investigate the allegations of the discriminatory practices set forth in the charge.

(c) The respondent may file, no later than twenty (20) CALENDAR days following receipt of the charge, a written verified answer to the charge. Failure to answer or participate in the process will be considered an admission.

(d) The city manager or designee shall render written findings as to whether there may be reasonable cause to substantiate the charge no later than one hundred twenty (120) CALENDAR days from the filing of the charge. The city manager or designee shall furnish a copy of its report of findings to the charging party and to the respondent.

(e) If the city manager or designee finds that there is reasonable cause to believe that the respondent has engaged in a discriminatory practice that is prohibited by this article, the city manager or designee may attempt to eliminate the alleged discriminatory practice by conference, conciliation, and discussion. The terms of any agreement between the parties may require the respondent to refrain from or engage in certain actions to carry out the purposes of this article in the future. If an agreement is reached, the city manager or designee shall issue an order stating the terms of the agreement and furnish a copy to each party.

(f) No actions or omissions undertaken pursuant to this article, shall give rise to liability or legal responsibility on the part of the city or any of its employees, agents or officials.

(g) In connection with the investigation of any charge filed under this article, the city manager or designee shall seek the voluntary cooperation of any person to: obtain access to premises, records, documents, individuals and other possible sources of information; examine, record and copy any materials; and take and record testimony and obtain statements as reasonably necessary to further the investigation.

(h) Charges may be dismissed for reasons including: the complaint was untimely filed; the location of the alleged practice was outside of the city's jurisdiction; insufficient evidence exists to conclude that the violation occurred; or a conciliation agreement has been executed by the parties.

(i) If upon completion of the investigation, the city manager or designee has concluded that a violation of this article occurred, but is unable to obtain a conciliation agreement, refer the charge to an appropriate federal or state agency, or otherwise dispose of the violation, it shall impose a fine of one thousand five hundred dollars (\$1,500) per civil violation. A person found responsible for the same civil infraction shall be fined no more than two thousand five hundred dollars (\$2,500). In addition, the city manager or designee may refer the matter to the city attorney's office, who shall determine how best to pursue further action, if any, on the violation.

(j) The city attorney's office will determine whether sufficient facts and evidence exist in order to warrant the initiation of an action in a court of competent jurisdiction. If the city attorney's office determines that the facts or evidence are insufficient to warrant the initiation of an action, the city attorney will provide written notification to the parties, and the charge will be dismissed.

(k) Failure to remit payment of a fine imposed under this article shall result in collection efforts as any other civil judgment.
(Ord. No. O2014.10, 2-27-14)

Sec. 2-607. Severability and legal effect.

(a) Nothing contained in this article shall be deemed or interpreted to alter, contravene, or supersede state or federal laws, including privacy laws.

(b) Nothing in this article shall be deemed to confer rights or benefits in addition to what is described herein.

(c) Nothing in this article shall be construed to give rise to civil or legal liabilities greater than those already existing under law or to create private causes of action, other than to be remedied as set forth herein.

(d) If any provision, section or subsection of this article is held to be invalid by a court of competent jurisdiction, then such provision, section or subsection shall be considered separately and apart from the remaining provisions or sections, which shall remain in full force and effect.
(Ord. No. O2014.10, 2-27-14)

Sec. 2-608. Appeals.

The following is the process for appeals of any action under this article:

- (1) If either party is dissatisfied with the findings of a violation under this article, the party may administratively appeal the decision to the city manager or designee, within ~~five (5)~~ TEN (10) CALENDAR days of receipt of the findings. The city manager or designee shall render a decision within ten (10) ~~working~~ CALENDAR days of the receipt of

request for review;

- (2) If any fines are levied pursuant to this article, the party may appeal the decision and resulting fine in writing to the city manager within ~~five (5) working~~ TEN (10) CALENDAR days of the receipt of the imposition of the fine. Such appeal shall contain the factual basis for the party's position and the reasons why the decision is incorrect and should be overturned;
- (3) If either party is dissatisfied with the administrative review by the city manager, the party may file an appeal in writing with the city clerk to be heard by a hearing officer. Such appeal shall be filed within ten (10) CALENDAR days of the receipt of a decision by the city manager, setting forth the reasons why the decision is incorrect and should be overturned;
- (4) The hearing officer shall consider all facts relating to the issuance of the charge and resulting fine, if any, and may uphold the penalty imposed, eliminate it or modify it;
- (5) The costs of the administrative hearing may be assessed to the responsible party in addition to any other fines and penalties, in the event the charge is upheld; and
- (6) If either party is dissatisfied with the review by the hearing officer, the party may file an appeal in writing with the city clerk to be heard by the city council. Such appeal shall be filed within ten (10) CALENDAR days of the receipt of a decision by the hearing officer, setting forth the reasons why the decision is incorrect and should be overturned. The decision of the city council shall constitute the final decision.

(Ord. No. O2014.10, 2-27-14)

Section 2. Pursuant to the Tempe City Charter, Section 2.12, ordinances are effective thirty (30) days after adoption or at any later date specified therein.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF
TEMPE, ARIZONA, this ___ day of _____, 2016.

Mark W. Mitchell, Mayor

ATTEST:

Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:

Judith R. Baumann, City Attorney