

AN ORDINANCE CREATING A NEW CHAPTER, CHAPTER 15, IN TITLE 5 OF ADA COUNTY CODE, PROHIBITING DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY/EXPRESSION IN THE AREAS OF EMPLOYMENT, PUBLIC ACCOMMODATIONS, AND HOUSING ACCOMMODATIONS

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ADA COUNTY, IDAHO, THAT ADA COUNTY CODE, TITLE 5, CHAPTER 15 IS ESTABLISHED AS FOLLOWS:

**5-15-1: PURPOSE AND DECLARATION OF POLICY:**

- A. Purpose: In order to ensure that all persons, regardless of sexual orientation and gender identity/expression enjoy the full benefits of citizenship and are afforded equal opportunities for employment, housing, commercial property and the use of public accommodations, Ada County (“County”) has determined that discrimination on these bases must be addressed, and appropriate legislation be enacted.
  
- B. Rights of Individuals: It is hereby declared that every individual in the County has the right to work and earn wages through gainful employment, has the right to seek housing, and has the right to enjoy public accommodation and hospitality.
  
- C. Public Policy: It is hereby declared the public policy of the County to foster the employment of all individuals in accordance with their abilities. Every individual has the right to work and earn wages through gainful employment. Discriminatory employment practices are detrimental because they impede the social and economic progress of a County by preventing all of the County citizens from contributing to the cultural, spiritual, social and commercial life of the community. The contributions of all the citizens of the County are essential to the County's growth, vitality and prosperity.
  
- D. Intent: It is the intent of this chapter that all persons be treated fairly and equally, and it is the express intent of this chapter to guarantee fair and equal treatment under the law to all people in the County. The denial of fair and equal treatment under the law due to sexual orientation and gender identity/expression is detrimental to the health, safety and welfare of the County citizens and damages a County's economic well-being.
  
- E. Police Power: This chapter shall be deemed an exercise of the police power of the County to provide for the safety, promote the health and prosperity, improve the morals, peace, good order, comfort, and convenience of the County, its residents and the community.

- F. Supplement To Law: The prohibitions against discriminatory acts as provided for in this chapter are intended to supplement State and Federal Civil Rights Law prohibiting discrimination in the areas of employment, public accommodations and housing. For complaints alleging discrimination on a basis proscribed under State or Federal law (e.g., race, color, religious creed, ancestry, age, sex, national origin and/or disability) the complainant is advised of their right to file a report alleging a violation of Idaho Code section 18-7301 et seq., and/or their right to file a complaint with the Idaho Commission on Human Rights and/or the Federal Equal Employment Opportunity Commission pursuant to title VII of the Civil Rights Act of 1964, as amended, the Fair Housing Act of 1968, as amended, or the Americans With Disabilities Act of 1990, as amended.

**5-15-2: DEFINITIONS:**

The following words and phrases used in this chapter shall have the following meanings unless a different meaning clearly appears from the context:

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

**DISCRIMINATION:** Any direct or indirect exclusion, distinction, segregation, limitation, refusal, denial or other differentiation in the treatment of a person because of a person's actual or perceived sexual orientation or gender identity/expression or because of a person's association with any such person. Discrimination shall not be interpreted to require or to grant or accord any preferential treatment to any person because of that person's sexual orientation or gender identity/expression.

**FULL ENJOYMENT OF:** To include, but not be limited to, the right to use, rent or purchase real property, any service, commodity or article of personal property offered or sold by any person or establishment to the public, and the admission of any person to accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage or amusement, without acts directly or indirectly causing persons of any particular sexual orientation and/or gender identity/expression to be treated as not welcome, accepted, desired or solicited.

**GENDER EXPRESSION/IDENTITY:** A gender related identity, appearance, expression or behavior of an individual, regardless of a person's assigned sex at birth.

**HOUSING ACCOMMODATION:** A building or portion of a building, whether constructed or to be constructed, that is or will be used as the home, domicile, residence or sleeping quarters of its occupants.

PERSON: Any natural person, firm, corporation, partnership or other organization, association or group of persons however arranged.

PLACE OF PUBLIC RESORT, ACCOMMODATION, ASSEMBLAGE OR AMUSEMENT: Includes, but is not limited to, any public place, licensed or unlicensed, kept for gain, hire or reward, or where charges are made for admission, service, occupancy or use of any property or facilities, whether conducted for the entertainment, housing or lodging of transient guests, or for the benefit, use or accommodation of those seeking health, recreation or rest, or for the sale of goods and merchandise, or for the rendering of personal services, or for public conveyance or transportation on land, water or in the air, including the stations and terminals thereof, and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports or recreation of any kind is offered, with or without charge, or where medical service or care is made available, or where the public gathers, congregates, or assembles for amusement, recreation or public purposes, or public halls, public elevators and public washrooms of buildings and structures occupied by two (2) or more tenants, or by the owner and one or more tenants, or any public library or any educational institution wholly or partially supported by public funds, or schools of special instruction, or nursery schools, or daycare centers or children's camps; nothing herein contained shall be construed to include, or apply to, any institute, bona fide club or place of accommodation, which is by its nature distinctly private; provided, that where public use is permitted, that use shall be covered by this section; nor shall anything herein contained apply to any educational facility operated or maintained by a bona fide religious or sectarian institution.

SEXUAL ORIENTATION: Actual or perceived homosexuality, heterosexuality and/or bisexuality and/or gender identity/expression.

**5-15-3: PROHIBITED DISCRIMINATORY ACTS:**

The following acts are prohibited:

- A. To deny to any other person because of sexual orientation and/or gender identity/expression the right to work: 1) by failing or refusing to hire; 2) by discharging; 3) by barring from employment; 4) by discriminating against such person in compensation or in other terms or conditions of employment; or 5) otherwise discriminating against an individual with respect to employment.
- B. To deny to or to discriminate against any person because of sexual orientation and/or gender identity/expression the full enjoyment of any of the accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage or amusement.
- C. To deny to or discriminate against any other person because of sexual orientation and/or gender identity/expression in the sale, purchase, lease or rental of any housing accommodation, or to otherwise discriminate in the terms and conditions, maintenance, improvement or repair of any housing accommodation.

**5-15-4: EXCEPTIONS:**

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

**5-15-5: UNLAWFUL INTIMIDATION, RETALIATION AND INTERFERENCE:**

It shall be unlawful for any person to discriminate against, harass, threaten, harm, damage or otherwise penalize another person for opposing an unlawful practice, for filing a complaint, for assisting or participating in any manner in the investigation, or in mediation concerning this chapter.

**5-15-6: PRIVATE RIGHT OF ACTION:**

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

**5-15-7: PENALTY:**

- A. First Offense. Any person found in violation of any of the provisions of this Chapter shall be guilty of an infraction for the first offense. Such violation shall be subject to the penalty of a fine of two hundred fifty dollars (\$250.00) plus the appropriate court costs.

- B. Subsequent Offense(s). Any person found in violation of any of the provisions of this Chapter within five (5) years of any previous violation of any of the provisions of this Chapter shall be guilty of a misdemeanor, subject to the penalty as provided in section 1-4-1 of this Code
- C. Reduction To Infraction: A Prosecutor may reduce the violation to an infraction, punishable as provided above, if the defendant engages in corrective actions, which may include, but are not limited to, the following: sensitivity training for the defendant and/or the defendant’s employees; the defendant’s agreement to adopt and pursue a policy of nondiscrimination in its practices; and the defendant’s agreement to not engage in discriminatory practices in the future. The charge shall be filed as a misdemeanor violation and may only be reduced upon motion of the prosecutor. There shall be no right to a trial by jury for an infraction citation or complaint.
- D. Time Limit To File Complaint: A complaint filed under the provisions of this chapter must be filed within one hundred eighty (180) days of the alleged discriminatory conduct. This complaint will be forwarded to the Ada County Prosecutor’s Office for review for filing decision for a civil infraction.
- E. False Reporting: Any person who falsely reports a violation of this chapter may be charged with the crime of providing false information to law enforcement, Idaho Code § 18-5413.

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2020.

**Board of Ada County Commissioners**

By: \_\_\_\_\_  
Kendra Kenyon, Commissioner

By: \_\_\_\_\_  
Diana Lachiondo, Commissioner

By: \_\_\_\_\_  
Rick Visser, Commissioner

ATTEST:

\_\_\_\_\_  
Phil McGrane, Ada County Clerk

PUBLISHED: \_\_\_\_\_