

ORDINANCE NO. ____:2013

AN ORDINANCE AMENDING TITLE 9, GENERAL REGULATIONS, CHAPTER 96, DISCRIMINATORY PRACTICES TO PROHIBIT DISCRIMINATION AGAINST INDIVIDUALS IN HOUSING, EMPLOYMENT AND PUBLIC ACCOMMODATION ON THE BASIS OF RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, GENDER IDENTITY, SEXUAL ORIENTATION, FAMILIAL STATUS OR DISABILITY STATUS AND TO PROVIDE ENFORCEMENT

WHEREAS, the Board of City Council of the City of Morehead believe that all individuals in the City of Morehead should be treated fairly, and with respect and dignity;

WHEREAS, the Board of City Council of the City of Morehead desires to prohibit discrimination against individuals in housing, employment and public accommodation on the basis of race, color, religion, national origin, sex, age, gender identity, sexual orientation, familial status or disability status, and to provide for the enforcement;

NOW, THEREFORE, BE IT ORDAINED by the Board of City Council of the City of Morehead, Kentucky that Title 9, General Regulations, Chapter 96 Discriminatory Practices be amended as follows:

Section 96.-Purpose.

It is the public policy of the City of Morehead (the "City") to promote fair treatment and equal opportunity for all persons regardless of race, color, religion, national origin, sex, age (over the age of 40), disability, sexual orientation, gender identity, or familial status. The City desires to implement a policy to protect all individuals within the City from discrimination on the basis of these protected classifications in the contexts of housing and related financial transactions, employment and public accommodations

Section 96.02 Definitions.

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

"AGE". Age 40 years and over.

"DISCRIMINATION." Any direct or indirect act or practice of exclusion, distinction, restrictions, segregation, limitation, refusal, denial, or any other act or practice of differentiation or preference in treatment of a person or the aiding, abetting, inciting, coercing, or compelling thereof made unlawful under this chapter.

"DWELLING." Any building, structure or portion thereof which is occupied as, or designated or intended for occupancy as, a residence by one or more families, and any

vacant land which is offered for sale or lease for the construction or location thereon of any building, structure or portion thereof.

"EMPLOYEE." Any individual employed by an employer, but not including an individual employed by his or her parents, spouse or child, or an individual employed to render services as a nurse, domestic or personal companion in the home of the employer.

"EMPLOYER." A person who has eight (8) or more employees within the City in each of twenty (20) or more calendar weeks in the current or preceding calendar year and an agent of such person, except for purposes of determining discrimination based on disability. Employer means a person engaged in an industry affecting commerce who has fifteen (15) 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 that person, excluding the United State and the Commonwealth of Kentucky or one of its agencies or corporations or an Indian Tribe.

"FAIRNESS OFFICER." The Mayor of the City of Morehead or an elected official or city employee who has been designated by the Mayor.

"FAMILIAL STATUS." One or more individuals who have not attained the age of 18 years and are being domiciled with a parent or another person having legal custody of such individual or individuals; or the designee of such parent or other person having such custody, with the written permission of such parent or other person. The protection 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.

"FAMILY." Includes a single individual, spouse, and children, whether related by blood, legal guardianship, adoption or marriage.

"FINANCIAL INSTITUTION." A bank, banking organization, mortgage company, insurance company, or other lender to whom application is made for financial assistance for the purchase, lease, acquisition, construction, rehabilitation, repair, maintenance, or improvement of real property, or an individual employed by or acting on behalf of any of these.

"GENDER IDENTITY." The gender-related identity appearance, or mannerisms or other gender-related characteristics of a person with or without regard to the person's designated sex at birth.

"HOUSING ACCOMMODATIONS." Includes improved and unimproved property and means a building, structure, lot, or part thereof which is used or occupied as the home or residence of one or more individuals.

"PERSON." One or more individuals, labor unions, joint apprenticeship committees, partnerships, associations, corporations, legal representatives, mutual companies, joint

stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, or other legal or commercial entity; the state, any of its political or civil subdivisions or agencies.

"PLACE OF PUBLIC ACCOMMODATION, RESORT OR AMUSEMENT." Any place, building, facility, store or other establishment, either license or unlicensed, which supplies goods or services to the general public or which solicits or accepts the patronage or trade of the general public or which is supported directly or indirectly by government funds; except that a private club is not a place of public accommodation, resort or amusement if its policies are determined by its members and its facilities or services are available only to its members and their bona fide guests. Place of Public Accommodation, Resort or Amusement does not include a dwelling or rooming or boarding house containing no more than one room for rent or hire and which is within a building occupied by the proprietor as his or her residence.

"REAL PROPERTY." Includes buildings, structures, real estate, lands, tenements, leaseholds, cooperatives, condominiums, and hereditaments, corporeal and incorporeal, or any interest in the above.

"REAL ESTATE BROKER" or "REAL ESTATE SALESMAN." An individual, whether licensed or not, who, on behalf of others, for a fee, commission, salary, or other valuable consideration, or who, with the intention or expectation of receiving or collecting the same, lists, sells, purchases, exchanges, rents, or lease real estate, or the improvements thereon, including options, or who negotiates or attempts to negotiate on behalf of others such an activity; or who advertises or holds himself out as engaged in such activities; or who negotiates or attempts to negotiate on behalf of others a loan secured by mortgage or other encumbrance upon a transfer of real estate, or who 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, rental, or lease of real estate through its listing in a publication issued primarily for such purpose; or an individual employed by or acting on behalf of any of these.

"REAL ESTATE OPERATOR." Any individual or combination of individuals, labor unions, joint apprenticeship committees, partnerships, associations, corporations, legal representatives, mutual companies, trusts, unincorporated organizations, trustees in bankruptcy, receivers, or other legal or commercial entity, the county or any of its agencies, that is engaged in the business of selling, purchasing, exchanging, renting, or leasing real estate, or the improvements thereon, including options, or that derives income, in whole or in part, from the sale, purchase, exchange, rental, or lease of real estate; or an individual employed by or acting on behalf of any of these.

"SEXUAL ORIENTATION". An individual's actual or imputed heterosexuality, homosexuality or bisexuality.

Section 96.03 UNLAWFUL HOUSING PRACTICES.

It is hereby unlawful for any person to refuse or perceive to refuse to sell, lease, and/or transfer, attempt to evict or otherwise treat differently any person based upon race, color, national origin, sex and/or gender identity, religion, age and/or sexual orientation.

Section 96.04 EXEMPTIONS FROM HOUSING PROVISIONS.

(A) Nothing in § 96.03 shall apply:

- (1) To the rental of a housing accommodation in a building which contains housing accommodations for not more than two families living independently of each other, if the owner or a member of his family resides in one of the housing accommodations;
- (2) To the rental of a portion of a housing accommodation by the occupant of the housing accommodation, or by the owner of the housing accommodation if he or a member of his family resides therein;
- (3) To a religious institution, or to an organization operated for charitable or educational purposes, which is operated, or supervised, or controlled by a religious corporation, association, society, to the extent that the religious corporation, association, or society limits, or gives preferences in, sale, lease, rental, assignment, or sublease of real property to individuals of the same religion, or makes a selection of buyers, tenants, lessees, assignees, or sublessees, that is calculated by such religious corporation, association, or society to promote the religious principles for which it is established or maintained;
- (4) To the private sale by a private individual homeowner who disposes of his property without the aid of any real estate operator, broker, or salesman, and without advertising or public display;
- (5) To a real estate operator to require him to negotiate with any individual who has not shown evidence of financial ability to consummate the purchase or rental of a housing accommodation.

Section 96.05 UNLAWFUL FINANCIAL PRACTICES.

It is an unlawful practice for a financial institution or an individual employed by or acting on behalf of a financial institution:

- (A) To discriminate against a person because of the race, color, creed, national origin, age forty (40) and over, disability, sex, gender identity, sexual orientation, or familial status of the individual or the present or prospective owner, tenant, or occupant, of the real property or a member, stockholder, director, officer, employee, or representative of any of these, and the granting, withholding, extending,

modifying or renewing; the rates, terms conditions, privileges, or other provisions of financial assistance or in the extension of services in connection therewith.

(B) To use a form of application for financial assistance or to make or keep a record or inquiry in connection with applications for financial assistance which indicate directly or indirectly a limitation, specification, or discrimination as to race, color, creed, national origin, age forty (40) and over, disability, sex, gender identity, sexual orientation, or familial status or an intent to make such a limitation, specification, or discrimination.

(C) To discriminate by refusing to give full recognition, because of sex, to the income of each spouse or the total income and expenses of both spouses where both spouses become or are prepared to become joint or several obligators in real estate transactions.

Section 96.06 BLOCK BUSTING.

It is an unlawful practice for a real estate operator, a real estate broker, a real estate salesman, a financial institution, an employee of any of these, or any other person, for the purpose of inducing a real estate transaction from which he may benefit financially:

(A) To represent that a change has occurred or will or may occur in the composition with respect to race, color, religion, sex, disability, familial status, gender identity, sexual orientation, or national origin, of the owners or occupants in the block, neighborhood, or area in which the real property is located; or

(B) To represent that this change will or may result in the lowering of property values; an increase in criminal or anti-social behavior, or a decline in the quality of schools in the block, neighborhood, or area in which the real property is located.

(C) To induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, disability, familial status, gender identity, sexual orientation or national origin.

Section 96.07 UNLAWFUL PRACTICE IN CONNECTION WITH PUBLIC ACCOMMODATIONS.

(A) Except as otherwise provided herein, it is an unlawful practice for a person to deny any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation, resort or amusement as defined herein, on the ground of race, color, religion, national origin, sex, age forty (40) and over, disability, sexual orientation or gender identity.

(B) It shall be an unlawful practice to deny any person, because of race, color, religion, national origin, sex, age forty(40) and over, disability, sexual orientation or gender identity, the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a restaurant, hotel, motel, or any facility supported directly or indirectly by government funds.

(C) The provisions of this subsection shall not apply to:

(1) Restrooms, shower rooms, bath houses and similar facilities which are in their nature distinctly private;

(2) YMCA, YWCA and similar type dormitory lodging facilities;

(3) The exemptions contained in the definition of "Places of Public Accommodations, Resort or Amusement", herein.

(4) Hospitals, nursing homes, penal or similar facilities, with respect to any requirement that men and women not be in the same room

Section 96.08 UNLAWFUL PRACTICES IN CONNECTION WITH EMPLOYMENT

(A) It is prohibited, unlawful practice for an employer or employment agency:

(1) To fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his or her compensation, terms, conditions or privileges of employment, because of such individual's race, color, religion, national origin, age forty (40) and over, disability, sex, gender identity, or sexual orientation; or

(2) To limit, segregate, or classify his or her employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee because of such individual's race, color, religion, national origin, age forty(40) and over, disability, sex, gender identity, or sexual orientation; or

(B) It is an unlawful practice for an employment agency to fail or refuse to refer for employment or otherwise to discriminate against, any individual because of his or her race, color, religion, national origin, age (40) and over, disability, sex, gender identity, or sexual orientation, or to classify or refer for employment an individual on the basis of race, color, religion, national origin, age forty (40) and over, disability, sex, gender identity or sexual orientation.

(C) It is an unlawful practice for a labor organization:

(1) To exclude or to expel from its membership or to otherwise discriminate against a member or applicant for membership because of race, color, religion, national origin, age 40 and over, disability, sex, gender identity, or sexual orientation; or

(2) To limit segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any way or manner which would deprive or tend to deprive an individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect one's status as an employee or as an applicant for employment because of such individual's race, color, religion, national origin, age forty (40) and over, disability, sex, gender identity, or sexual orientation; or

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

(D) It is an unlawful 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 any individual because of race, color, religion, national origin, age forty (40) and over, disability, sex, gender identity, or sexual orientation, in admission to or employment in, any program established to provide such apprenticeship, training, or retraining.

(E) It is an unlawful practice for any employer, labor organization, or employment agency to print or publish or cause to be printed or published, any notice or classification or referral for employment by such a labor organization or classification or limitation, specification or discrimination based on race, color, religion, national origin, age forty(40) and over, disability, sex, gender identity, or sexual orientation, except that such a notice or advertisement may indicate a preference, limitation, or specification, based on religion, national origin, age forty (40) and over, disability or sex when religion, national origin, age forty (40) and over, disability or sex is a bona fide occupational qualification for employment.

(F) Nothing herein shall be construed to prevent an employer from:

- (1) Enforcing a written employees dress policy; or
- (2) Designating appropriate restroom and shower facilities.

(G) Employment Exceptions. Notwithstanding any other provisions of this chapter, it shall not be an unlawful practice for:

(1) An employer to hire and employ employees, or an employment agency to classify or refer for employment an individual, or for a labor organization to classify its membership or to classify or refer for employment and 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 any such program, on the bases of his religion or national origin in those certain instances where religion or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise;

(2) A religious organization, corporation, association, or society to employ an individual on the basis of his or her religion to perform work connected with the carrying on by such corporation, association, or society of its religious activity;

(3) A school, college, university, or other educational institution to hire and employ individuals 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, and the choice of employees is determined by such organization to promote the religious principles for which it is established or maintained;

(4) An employer 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 measure earnings by quantity or quality of 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, national origin, sex, age forty (40) and over, disability, gender identity, or sexual orientation, nor is it an unlawful practice for an employer to give and to act upon the results of any professionally developed competency or ability test provided that the test, its administration or action based upon the test results is not designed, intended or used to discriminate because of race, color, religion, national origin, sex, age forty (40) and over, disability, gender identity, or sexual orientation.

Section 96.09 General Exception

The provisions of this Chapter regarding sexual orientation or gender identity shall not apply to a religious institution, association, society or entity or to an organization operated for charitable or educational purposes, which is owned, operated or controlled by a religious institution, association, society or entity, except that when such an institution or organization receives a majority of its annual funding from any federal, state, local or other governmental body or agency, or any combination thereof, it shall not be entitled to this exemption.

Section 96.10 ENFORCEMENT PROCEDURE.

(A) City's Relationship with the Kentucky Commissions on Human Rights

In order to effectuate and enforce the provisions of this subsection, the City shall enter into a cooperative working agreement with the Kentucky Commission on Human Rights whereby all claims filed with the Fairness Officer alleging discrimination

in employment, public accommodations, housing financial and credit transactions based on race, color, national origin, religion, age (over 40), familial status and disability, shall be referred to the Kentucky Commission on Human Rights for investigation and enforcement in accordance with the Kentucky Civil Rights Act, KRS Chapter 344 et seq. The City shall reserve to itself the resolution of all claims of discrimination based on sexual orientation or gender identity.

(B) Filing and Processing Complaints:

(1) Any person claiming to be aggrieved by a violation of this ordinance may, within 180 days of the alleged violation or one year if the alleged violation pertains to housing file a written complaint under oath with the Fairness Officer containing the following information:

(a) The name and address (if known) of the alleged violator, ("Respondent") or fact sufficient to identify such person.

(b) An outline of the material facts upon which the complaint is based.

(c) The alleged violation.

(d) That any conduct of the complainant was for the purpose of obtaining housing, employment or public accommodation in question and not for the purpose of harassment or entrapment of the person against whom the complaint is made.

(e) That a complaint concerning this same matter has not been filed with another agency or that any complaint concerning this matter filed with another agency has been dismissed by such agency without a final judgment on the merits.

(2) Upon receipt of the complaint, the Fairness Officer shall first make the following determination, and take the following action:

(a) If the complaint alleges discrimination based on race, color, national origin, religion, sex, age (over 40), familial status or disability, the complaint shall immediately be referred to the Kentucky Commission on Human Rights for further processing, investigation and/or administrative proceedings in accordance with the Kentucky Civil Rights Act, KRS Chapter 344, et seq.

(b) If the complaint alleges discrimination based on sexual orientation or gender identity, a copy of the complaint shall be served on the respondent by certified mail. The respondent shall file a written response to the complaint within twenty (20) days from the receipt thereof.

(C) Investigation – Findings and Conciliation

(1) If, after investigation, the Fairness Officer determines that there is no probable cause to believe that a violation has occurred, the Fairness Officer shall dismiss the complaint. Written notices of the dismissal shall be served upon the complainant and responded by U.S. Mail postage prepaid. The notice shall state that the complainant or his or her designee may file a written request for reconsideration within ten (10) days in accordance with the provisions set out in KRS 344.200.

(2) If, after investigation, the Fairness Officer determines that there is probable cause to support the allegations contained in the complaint, the Fairness Officer shall endeavor to eliminate the alleged violation by a conciliation agreement, signed by all parties and the Fairness Officer, wherein the alleged violation is eliminated and the complainant is made whole to the greatest extent practicable.

(3) If a settlement is achieved, the Fairness Officer shall furnish a copy of a signed conciliation agreement to the complainant and the respondent. The terms of the conciliation agreement may be made public, but no other information relating to any complaint, its investigation or its disposition may be disclosed without consent of the complainant and the person charged. A conciliation agreement need not contain a declaration or finding that a violation has in fact occurred and it may provide for dismissal of the complaint without prejudice. The Board of City Council shall have discretion to approve, modify or reject the conciliation agreement.

(4) If conciliation is not achieved either by agreement between the parties or approval by the Board of City Council, the Fairness Officer shall proceed with a hearing in accordance with the Kentucky Civil Rights Act and KRS 13 B.

(D) Hearing Procedures, Judicial Review and Appeals

(1) The Fairness Officer shall set a date, time and location for a hearing and notify the complainant and respondent in writing at least twenty (20) days in advance of that hearing date.

(2) A hearing officer shall be appointed by the Fairness Officer to conduct an administrative hearing and to regulate the course of the proceedings in a manner that will promote the orderly and prompt conduct of the hearing. The hearing officer shall be an attorney, licensed to practice law in the Commonwealth of Kentucky, and shall be certified by the Attorney General's Office to serve as hearing officer in accordance with the requirements set forth in KRS 13B.

(3) All pre-hearing proceedings, hearings, judicial review and appeals shall be conducted in accordance with all applicable provisions of the Kentucky Civil Rights Act, including KRS 344.240 and KRS 13B, the provisions of all of which are hereby adopted in full and incorporated herein by reference.

(4) If the Hearing Officer finds that a violation has occurred, he/she may recommend the following penalties:

(a) For the first or second offense, a civil penalty of not less than \$100.00, but not greater than \$250.00.

(b) For the third or subsequent offense, a civil penalty of not less than \$250.00, but not greater than \$500.00. Additionally, the violator shall be required to submit written corrective measures to the Board of City Council.

The Hearing Officer shall submit the final adjudication and recommended order to the City Council for approval.

(5) Upon approval by the City Council, the Fairness Officer shall mail a copy the Order to the Complainant and Respondent, postage pre-paid. The Respondent shall have thirty days to pay any penalty issued in the Order. If the Respondent does not pay the penalty within the time given, then City Council may direct the City Attorney to place a lien against the Respondent's property in the office of the County Clerk where said property is located.

Section 96.11 ENFORCEMENT BY PRIVATE ACTION.

(A) Rights created under this chapter may be enforced by civil action in the state or local courts of general jurisdiction by aggrieved individuals by bringing an action within 180 days after the alleged discriminatory practice has occurred. Provided, however, that upon the bringing of such civil action, the court shall continue the case from time to time before bringing it to trial, and direct the parties to submit themselves to conciliation efforts of the Human Rights Commission, and shall bring the matter to trial only upon certification by the chairman of the Human Rights Commission that all reasonable efforts have been brought to bear to informally resolve the complaint, and that, in the opinion of the chairman, the matter cannot be resolved to the satisfaction of the parties involved.

(B) The court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order, and may award to the plaintiff actual damages and not more than \$1,000 punitive damages, together with court costs and reasonable attorney's fees in the case of prevailing plaintiff.

Section 96.12 Obstruction and Retaliation

It shall be an unlawful practice for a person, or for two (2) or more persons to conspire:

(A) To retaliate or discriminate in any manner against a person because he or she has opposed a practice declared unlawful by this chapter, or because he or she has