

ORDINANCE NO. 1327

AN ORDINANCE OF THE COUNCIL OF THE CITY OF WINSLOW, ARIZONA, AMENDING THE WINSLOW CITY CODE, TITLE 9, PUBLIC PEACE, MORALS AND WELFARE, BY ADDING A NEW CHAPTER 9.11, HUMAN RIGHTS.

WHEREAS, the City of Winslow, Arizona (the “City”) is comprised of various and diverse individuals and groups of people; and

WHEREAS, the City 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 Winslow; and

WHEREAS, discrimination and discriminatory practices prohibits the social and economic growth and progress of the City; and

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

WHEREAS, the City desires to implement a process to resolve claims alleging discrimination, including those affecting businesses and individuals within the City of Winslow, that will observe and protect the dignity, rights and privacy, and interests of all parties involved.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WINSLOW, ARIZONA, as follows:

SECTION 1. The recitals above are hereby incorporated as if fully set forth herein.

SECTION 2. The Winslow City Code, Title 9 (Public Peace, Morals and Welfare) is hereby amended to add a new Chapter 9.11 (Human Rights) to read as follows:

CHAPTER 9.11– HUMAN RIGHTS

9.11.010 Purpose. The provisions of this chapter are intended to supplement state and federal civil rights law prohibiting discrimination in the areas of employment, public accommodations, and housing.

9.11.020 Definitions. The following words, terms and phrases, when used in this chapter, 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 18 years of age.

“Contractor” means any person who has a contract with the city.

“Disability” means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of that individual as described in the Americans with Disabilities Act.

“Discrimination” means to exclude individuals from an opportunity or participation in any activity or to accord different or unequal treatment in the context of a similar situation to similarly situated individuals because of race, color, gender, gender identity, sexual orientation, religion, national origin or ancestry, marital status, familial status, age, disability, or veteran status.

“Employee” means an individual employed for pay to perform services for an employer covered by this chapter 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 or more employees for each working day in each of 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);

“Familial status” means the state of having one or more minor children under the age of 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 18 or disability.

“Gender identity” means the gender related identity, appearance, or mannerisms or other gender related characteristics of an individual, regardless of the individual’s designated sex at birth.

“Investigator” means an individual, appointed by the city manager or his/her designee, skilled in reviewing facts and circumstances as applied to legal proscriptions and forming conclusions as to whether violations of law have occurred.

“Marital status” means being or having been unmarried, married, divorced, or in a domestic partnership, civil union, or another form of adult domestic relationship recognized under the laws of a state or country.

“Place of public accommodation” means facilities, establishments, accommodations, services, commodities, or goods 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 and entities offering

goods, services or facilities, and entities soliciting patronage from the general public. This does not include any dwelling, private club, or any place which is in its nature distinctly private or any religious organization which does not offer facilities, establishments, accommodations, services, commodities, or goods to the general public.

“Sexual orientation” means actual or perceived homosexuality, heterosexuality, or bisexuality.

“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 chapter.

“Vendor” means a person or firm in the business of selling or otherwise providing products, materials, or services.

“Veteran” means a person who was enlisted, drafted, inducted, or commissioned and who was accepted for and assigned to active duty in the armed forces of the United States.

9.11.030 Policy

It is declared to be the policy for the citizens of the city of Winslow, 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, marital status, familial status, age, disability, or 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 chapter.

9.11.040 Administrative provisions.

A. Powers and Duties. Administration, authority and responsibility for administering this chapter shall rest with the city manager or his/her designee.

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 chapter.

2. The city manager or designee shall administer programs and activities as authorized herein to further the purposes of this chapter 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 chapter, including the acceptance of funds from such agencies and the carrying out of such covenants and conditions of such agreements, in compliance with this chapter.

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 chapter.

B. The city attorney shall be authorized to take such actions as authorized herein to carry out the duties as set forth in this chapter

9.11.050 Unlawful practices. The following shall constitute a violation of this chapter:

A. 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, marital status, familial status, age, disability, or veteran status.

B. For an employer, because of race, color, gender, gender identity, sexual orientation, religion, national origin, marital status, familial status, age, disability, or 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.

C. For a labor organization, because of race, color, gender, gender identity, sexual orientation, religion, national origin, marital status, familial status, age, disability, or 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.

D. 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, marital status, familial status, age, disability, or veteran status.

E. For a city vendor or city contractor, because of race, color, gender, gender identity, sexual orientation, religion, national origin, marital status, familial status, age, disability, or 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. Each city vendor and contractor shall provide a copy of its antidiscrimination policy to the city's procurement officer to confirm compliance with this chapter or attest in writing to compliance with this chapter.

F. 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 chapter.

G. 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 of disputes.

9.11.060 Exclusions.

Notwithstanding any other provision herein, nothing in this chapter is intended to alter or abridge other rights, protections, or privileges secured under state or federal law. This section shall be

construed and applied in a manner consistent with First Amendment jurisprudence regarding freedom of speech and exercise of religion. This chapter shall not apply to:

A. A religious organization with respect to the prohibitions concerning marital status, gender identity or sexual orientation. The provisions of this chapter prohibiting discrimination on the basis of marital status, sexual orientation, or gender identity shall not be construed to prohibit or prevent any religious organization, or any organization operated for charitable or educational purposes, which is operated, supervised, or controlled by or in connection with a religious organization, from taking any action which is calculated by the organization to promote the religious principles for which it is established or maintained; or

B. 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 chapter; or

C. A social club, as defined in this chapter.

D. The rental of housing accommodations in a building which contains housing accommodations for not more than two families living independently of each other, if the lessor or a member of his family resides in one of the housing accommodations, or the rental of a room or rooms in a single-family residential structure by an individual if he or a member of his/her family resides therein.

9.11.070 Fair housing.

A. It shall constitute a violation of this chapter 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, marital status, familial status, age, disability, or veteran status, within the legal jurisdiction of the city.

B. It shall constitute a violation of this chapter to refuse or offer on discriminatory terms 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, marital status, familial status, age, disability, or veteran status, within the legal jurisdiction of the city.

C. Nothing in this chapter 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.

9.11.080 Complaint procedures.

A. Any person claiming to be aggrieved by an alleged violation of this chapter (hereinafter the "complainant") may file with the city manager's office ("CMO") a verified charge, in writing, within 90 calendar days after the alleged violation occurred. The charge shall set forth the facts

upon which it is based, shall identify the person charged (hereinafter the “respondent”), and shall be signed by the complainant.

B. The CMO shall furnish the respondent with a copy of the charge via first class United States mail. The respondent may file, not later than 30 days following the CMO’s mailing of the charge to the respondent, a written verified answer to the charge.

C. Within 30 days following receipt of the charge from the complainant, the CMO shall conduct an initial screening of the charge to determine whether the city has jurisdiction over the charge, whether the charge was timely filed, and whether the allegations, if true, would constitute a violation of this chapter.

D. If the CMO determines, based on a review of the charge, that the city does not have jurisdiction, that the charge is untimely, or that the allegations would be insufficient to show a violation of this chapter, the CMO shall dismiss the charge. The decision of the CMO to dismiss the charge, after conducting the initial screening, is final. The CMO shall provide the complainant, the respondent, and the city attorney with written findings concerning the CMO’s determination to dismiss the charge and the charge will be considered closed.

E. If the CMO issues an initial determination that the city has jurisdiction over the charge, the charge was timely filed, and the allegations, if true, would constitute a violation of this chapter, the CMO shall refer the matter to a mediator.

F. The mediator shall review the matter. The mediator shall attempt to assist the complainant and respondent in reaching settlement of the charge in a cooperative manner using restorative justice principles, mediation, conference, conciliation, and persuasion. If the mediator deems that such an attempt is not practicable, the mediator shall refer the matter to an investigator. The investigator shall follow the process described in subsection (I) of this section.

G. If the mediation is successful, the mediator shall facilitate the drafting of an agreement with the complainant and the respondent for the purpose of eliminating the alleged discriminatory practice. The terms of the agreement may require the respondent to refrain in the future from committing discriminatory practices of the type stated in the agreement and to take such affirmative steps as the mediator may require to carry out the purposes of this chapter. If an agreement is entered into, the mediator shall furnish copies to the CMO, the city attorney, the complainant, and the respondent at which time the charge will be considered closed.

H. To the extent permitted by law, except for the terms of the agreement, neither the mediator nor the city manager, nor any employee thereof, shall make public, without the written consent of the complainant and respondent, information concerning efforts in a particular case to eliminate a discriminatory practice through mediation or by conference, conciliation, or persuasion, whether or not there is an agreement. In addition, as stated under Rule 408 of the Arizona Rules of Evidence, such information may not be used as evidence in any judicial proceeding.

I. If the mediator, the complainant, and the respondent cannot reach an agreement, the mediator shall refer the matter to an investigator, who shall attempt to determine the facts relevant to the

charge filed under this chapter. The investigator shall, pursuant to administrative policy direction provided by the city manager, conduct an investigation of the charge to determine whether the facts support a finding that a violation of this chapter has occurred. If the investigator determines that a violation of this chapter did not occur, the complainant's charge will be dismissed, and the matter will be considered closed. If the investigator determines that a violation of this chapter did occur, the investigator shall refer the matter to the city attorney for a determination of whether to file a complaint against the respondent in the Winslow municipal court.

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. 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.

K. In situations involving repeat offenses, the CMO shall immediately refer the matter to an investigator, who shall follow the process described in subsection (I) of this section. If, at the conclusion of the investigation process, the city attorney does not file a complaint in court then the city attorney may refer the charge back to the mediator. The mediator, in his or her discretion, may attempt to assist in resolution of the charge or may close the matter.

9.11.090 Penalties.

A. Any person found to have violated any section or subsection of this chapter shall be punished by the imposition of a civil sanction of a fine of \$1,500 and not more than \$2,500, plus applicable surcharges, for each violation.

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

C. In connection with the investigation of any charge filed under this chapter, 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; take and record testimony and obtain statements as reasonably necessary to further the investigation.

D. Failure to remit payment of a fine imposed under this chapter shall result in collection efforts as with any other civil judgment.

9.11.100 Severability and legal effect.

A. Nothing contained in this chapter shall be deemed or interpreted to alter, contravene, or supersede state or federal laws, including privacy laws.

B. Nothing in this chapter shall be deemed to confer rights or benefits in addition to what is described herein.

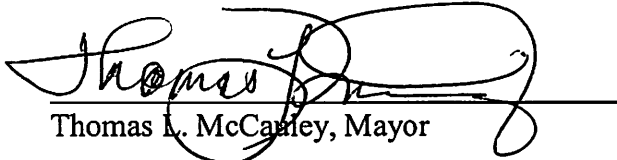
C. Nothing in this chapter shall be construed to give rise to civil or legal liabilities greater than those already existing under law or to create private causes of action, other than to be remedied as set forth herein.

D. If any provision, section, or subsection of this chapter 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.

SECTION 3. If any provision of this Ordinance is for any reason held by any court of competent jurisdiction to be unenforceable, such provision or portion hereof shall be deemed separate, distinct and independent of all other provisions and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 4. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps necessary to carry out the purpose of this Ordinance.

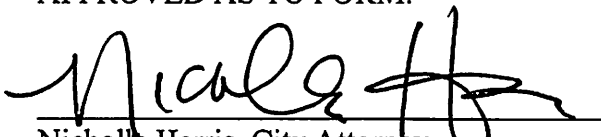
PASSED AND ADOPTED by the Council of the City of Winslow, Arizona, this 13th day of November, 2018.


Thomas L. McCauley, Mayor

ATTEST:


Suzy Wetzell, City Clerk

APPROVED AS TO FORM:


Nicholle Harris, City Attorney