

AN ORDINANCE AMENDING THE CITY OF MARTINSBURG CODE, PART 1, ADMINISTRATIVE CODE, CHAPTER 5, ADMINISTRATIVE, BY ADDING ARTICLE 154, NONDISCRIMINATION POLICY, SECTION 01 AND 02, TO PROVIDE FOR EQUAL OPPORTUNITY IN THE AREAS OF EMPLOYMENT, PUBLIC ACCOMMODATIONS THE SALE, LEASE, RENTAL AND FINANCING OF HOUSING ACCOMMODATIONS IS HEREBY DECLARED TO BE A HUMAN RIGHT OR CIVIL RIGHT OF ALL PERSONS WITHOUT REGARD TO RACE, RELIGION, COLOR, NATIONAL ORIGIN, ANCESTRY, SEX, AGE, BLINDNESS, HANDICAP, OR SEXUAL ORIENTATION AND GENDER IDENTITY

WHEREAS, the City of Martinsburg continues to strive to be an inclusive City, where people can live and work without fear of discrimination; and

WHEREAS, the City of Martinsburg wishes to maintain a competitive business environment by working with businesses to eliminate barriers to recruiting a talented workforce

Sec. 154.01 Declaration of Policy

(a) Equal opportunity in the areas of employment, public accommodations is hereby declared to be a human right or civil right of all persons without regard to race, religion, color, national origin, ancestry, sex, age, blindness, handicap, or sexual orientation and gender identity. Equal opportunity in the sale, lease, rental and financing of housing accommodations is hereby declared to be a human right or civil right of all persons without regard to race, religion, color, national origin, ancestry, sex, age, blindness, handicap, familial status, or sexual orientation and gender identity.

(b) The denial of these rights of properly qualified persons is contrary to the principles of freedom and equality of opportunity and is destructive to a free and democratic society.

Sec. 154.02 Definitions

When used in this chapter:

Age means 40 or above.

Discriminate or discrimination means to exclude from, or fail or refuse to extend to, a person equal opportunities because of race, religion, color, national origin, ancestry, sex, age, blindness, handicap, familial status, or sexual orientation and gender identity and includes "to separate" or "segregate".

Employee shall not include any individual employed by his parents, spouse or child, or in the domestic service of any person.

Employer means any person employing 12 or more persons within the city and includes an agent of such person, and its agencies. Provided, that such terms shall not be taken, understood or construed to include a private club, which, in fact, is not open to the public.

Employment agency includes any person regularly undertaking with or without compensation to procure, recruit, refer or place employees. A newspaper engaged in the activity of advertising in the normal course of its business shall not be deemed to be an employment agency.

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 eighteen years. Nothing in this definition restricts advertisements of dwellings which are intended and operated for occupancy by older persons and which constitute housing for older persons.

Handicap means a person who:

- (1) Has a mental or physical impairment which substantially limits one or more of such person's major life activities; "major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working;
- (2) Has a record of such impairment; or
- (3) Is regarded as having such an impairment.

For this purposes of this article "handicap" does not include persons whose current use of or addiction to alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reasons of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.

For the purpose of this article, a person shall be considered to be blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his visual acuity is greater than 20/200 but is occasioned by a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees.

Housing accommodations means any building or portion thereof which is used or intended for use as the residence or sleeping place of one or more persons. Nothing contained in this definition or this article shall apply to the rental of a room or rooms in a rooming house occupied by the owner as a place of residence and containing no more than four rented rooms, or rooms to be rented.

Labor organization includes any organization which exists for the purpose, in whole or in part, for collective bargaining or for dealing with employers concerning grievances, terms or conditions of employment, or for other mutual aid or protection in relation to employment.

Person means one or more individuals, partnerships, associations, organizations, corporations, labor organizations, cooperatives, legal representatives, trustees, trustees in bankruptcy, receivers and other organized groups of persons.

Owner shall include the owner, lessee, sublessee, assignee, manager, agents or other person having the right to sell, rent or lease any housing accommodation or real property within the city or any agent of any of these.

Place of public accommodations means any establishment or person, as defined herein, including the city and any of its affiliated boards and commissions, or any political or civil subdivision thereof, which offers its services, goods, facilities or accommodations to the general public, but does not include any accommodations which are in their nature private.

Purchaser includes any occupant, prospective occupant, lessee, prospective lessee, renter, prospective renter, buyer or prospective buyer.

Real estate broker includes any person, firm or corporation who, for a fee, commission or other valuable consideration, or by reason of a promise or reasonable expectation thereof, lists for sale, sells, exchanges, buys or rents, or offers or attempts to negotiate a sale, exchange, purchase or rental of real estate or an interest therein, or collects or offers or attempts to collect rent for the use of real estate or solicits for a prospective purchaser, or assists or desists in the procuring of prospects or the negotiation or closing of any transaction which does or is contemplated to result in the sale, exchange, leasing, renting or auctioning of any real estate, or negotiates, offers or attempts or agrees to negotiate a loan secured or to be secured by mortgage or other encumbrance upon transfer of any real estate for others, or any person who, for pecuniary gain or expectation of pecuniary gain, conducts a public or private competitive sale of lands or any interest in lands. In the sale of lots, the term "real estate broker" also includes any person, partnership, association or corporation employed by or on behalf of the owner or owners of lots or other parcels of real estate at a stated salary, or upon a commission, or upon a salary and commission, or otherwise, to sell such real estate, or any parts thereof, in lots or other parcels, and who shall sell or exchange, or offer or attempt or agree to negotiate the sale or exchange of any such lot or parcel of real estate. A newspaper engaged in the activity of advertising in the normal course of its business shall not be deemed to be a real estate broker.

Real estate salesman includes any person who, for compensation, valuable consideration or commission, or other thing of value, or by reason of a promise or reasonable expectation thereof, is employed by and operates under the supervision of real estate broker to sell, buy or offer to buy or negotiate the purchase, sale or exchange of real state, offers or attempts to negotiate a loan secured or to be secured by a mortgage or other encumbrance upon or transfer of real estate for others, or to collect rents for the use of real estate, or to solicit for prospective purchasers or lessees of real estate, or who is employed by a licensed real estate broker to sell or offer to sell lots or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission, or otherwise, to sell real estate, or any parts thereof, in lots or other parcels.

Real property includes real estate, lands, leaseholds, commercial or industrial buildings and any vacant land offered for sale or rent on which the construction of a housing accommodation, commercial or industrial building is intended, and any land operated as a trailer camp or rented or leased for the use, parking or storage of mobile homes or house trailers.

Rooming house means a house or building where there is one or more bedrooms which the proprietor can spare for the purpose of giving lodgings to such persons as he chooses to receive.

Sexual Orientation means actual or perceived heterosexuality, homosexuality or bisexuality.

Gender Identity means actual or perceived appearance, or behavior of an individual, with or without regard to the individual's assigned sex at birth.

Unlawful discriminatory practices includes only those practices specified in section 154.02.

Sec. 154.02 Unlawful Discriminatory Practices

It shall be an unlawful discriminatory practice, unless based upon a bona fide occupational qualification.

(1) For any employer to discriminate against an individual with respect to compensation, hire, tenure, terms, conditions or privileges of employment on the basis of race, religion, color, national origin, ancestry, sex, age, blindness, handicap, sexual orientation, gender identity. Provided, that it shall not be an unlawful discriminatory practice for an employer to observe the provisions of any bona fide pension, retirement, group or employee insurance or welfare benefit plan or system not adopted as a subterfuge to evade the provisions of this subsection (1).

(2) For any employer, employment agency or labor organization, prior to the employment or admission to membership, to:

a. Elicit any information or make or keep a record of or use any form of application or application blank containing questions or entries concerning the race, religion, color, national origin, ancestry, handicap, sex, blindness, age, sexual orientation, or gender identity of any applicant for employment or membership, except for such forms which shall be kept separate from the application blanks for the administration of any bona-fide affirmative action plan, that is in accordance with state and federal laws and regulations, or for the purpose of complying with any state or federal statute, or rule or regulation issued by any agency of the state or federal government, or for the purpose of making reports required by agencies of the state or federal government;

b. Print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specification or discrimination based upon race, religion, color, national origin, ancestry, handicap, sex, blindness, age, sexual orientation, or gender identity; or

c. Deny or limit, through a quota system, employment or membership because of race, religion, color, national origin, ancestry, handicap, sex, blindness, age, sexual orientation, or gender identity.

(3) For any labor organization because of race, religion, color, national origin, ancestry, handicap, sex, blindness, age, sexual orientation, or gender identity of any individual to deny full and equal membership rights to any individual or otherwise to discriminate against such individuals with respect to hire, tenure, terms, conditions or privileges of employment or any other matter, directly or indirectly related to employment.

(4) For an employer, labor organization, employment agency or any joint labor-management committee controlling apprentice training programs to:

a. Select individuals for an apprentice training program on any basis other than their qualifications as determined by objective criteria which permit review.

b. Discriminate against any individual with respect to his right to be admitted to or participate in a guidance program, an apprenticeship training program, on-the-job training program, or other occupational training or retraining program.

c. Discriminate against any individual in his pursuit of such programs or to discriminate against such a person in the terms, conditions or privileges of such programs.

d. Print or circulate or cause to be printed or circulated any statement, advertisement or publication; or to use any form of application for such programs; or to make any inquiry in connection with such program which expresses, directly or indirectly, discrimination or any intent to discriminate, unless based upon a bona fide occupational qualification.

(5) For any employment agency to fail or refuse to classify properly, refer for employment, or otherwise to discriminate against any individual because of his race, religion, color, national origin, ancestry, handicap, sex, blindness, age, sexual orientation, or gender identity.

(6) For any person being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodations to:

a. Refuse, withhold from or deny to any individual because of his race, religion, color, national origin, ancestry, handicap, sex, blindness, age, sexual orientation, or gender identity, either directly or indirectly, any of the accommodations, advantages, facilities, privileges or services of such place of public accommodations. *PROVIDED*, the refusal of a religious leader to perform a religious ceremony shall not violate the policy of this ordinance.

b. Publish, circulate, issue, display, post or mail, either directly or indirectly, any written or printed communication, notice or advertisement to the effect that any of the accommodations, advantages, facilities, privileges or services of such place shall be refused, withheld from or denied to any individual on account of race, religion, color, national origin, ancestry, handicap, sex, blindness, age, sexual orientation, or gender identity, or that the patronage or custom thereof of any individual belonging to or purporting to be of any particular race, religion, color, national origin, ancestry, sex, age, sexual orientation, or gender identity or who is blind or handicapped is unwelcome, objectionable, not acceptable, undesired or not solicited.

(7) For any person, employer, employment agency, labor organization, owner, real estate broker, real estate salesman or financial institution to:

a. Engage in any form of threats or reprisal, or to engage in, or hire, or conspire with others to commit acts or activities of any nature, the purpose of which is to harass, degrade, embarrass or cause physical harm or economic loss, or to aid, abet, incite, compel or coerce any person to engage in any of the unlawful discriminatory practices defined in this section.

b. Willfully obstruct or prevent any person from complying with the provisions of this article, or to resist, prevent, impede or interfere with the commission or any of its members or representatives in the performance of duty under this article.

c. Engage in any form of reprisal or otherwise discriminate against any person who has opposed any practices or acts forbidden under this article or because he has filed a complaint, testified or assisted in any proceeding under this article.

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