



Commission Memorandum

REPORT TO: Honorable Mayor and City Commission

FROM: Greg Sullivan, City Attorney

SUBJECT: Provisional Adoption of Ordinance 1890 Prohibiting Discrimination on the Basis of Sexual Orientation and Gender Identity or Expression

MEETING DATE: May 12, 2014.

AGENDA ITEM TYPE: Action.

RECOMMENDATION: Accept public testimony, consider the attached ordinance prepared for provisional adoption, and determine whether to adopt the ordinance as presented or amended. The adoption of this ordinance is a legislative act.

SUGGESTED MOTION: Should the Commission determine to move forward to provisionally adopt ordinance 1890, I suggest the Commission consider the following motion: *“Having considered public testimony, I move to provisionally adopt Ordinance 1890.”* Amendments to the ordinance should be made by standard Commission practice.

BACKGROUND: Over the past several months many in the Community have requested the Commission consider adoption of a non-discrimination ordinance (NDO). On April 28, 2014, the City Commission held a policy meeting on a proposed NDO and following the policy discussion directed me, by motion, to review the ordinance prepared by Deputy Mayor Taylor, consider specific comments provided by the Commission on the 28th, and prepare the ordinance for consideration by the Commission. Documents prepared by Deputy Mayor Taylor for the policy meeting on April 28th can be found [here](#).

I attach two versions of ordinance 1890 to this memo. The first shows changes I made from the draft presented to the Commission on the 28th. The changes I suggest are shown in strikeout/underline. This version is clearly labeled and has a watermark indicating it is for reference only.

I also provide a clean copy wherein all the changes I propose are included in the ordinance. This version is labeled for provisional adoption. It is this version that I suggest be the subject of the Commission’s action.

The ordinance for provisional adoption attached to this memorandum includes, to the extent feasible, inclusion of comments made by the Commission. Specifically, the changes I suggest to the ordinance include:

- Recitals that address the City’s legal authority;
- Suggested legislative findings (to be codified);

- Amendments to the policy, purpose, and intent section;
- The addition of a definition of “aggrieved party”;
- Deletion of the requirement for employers, businesses, or other entities to post notices;
- Creation of a 180 day time period for filing a petition in the municipal court (other time periods apply if a grievance is subject to another procedure); and
- Creation of a reciprocal costs and attorney fee provision.

The Commission inquired as to the scope of the jurisdiction of the proposed ordinance. When exercising its police powers under its self-governing authority, absent additional legal authority to extend jurisdiction, the City’s authority extends only to its geographical borders as automatically adjusted through annexation. No such authority to extend jurisdiction exists here. As such, the proposed ordinance would affect public accommodations that physically exist within the city (regardless of ownership), housing that physically exists within the city (regardless of ownership), and to employers where the primary place of employment is within the city. It is not possible, however, to address every possible circumstance regarding the jurisdiction of this ordinance as claims, and therefore jurisdiction, will be analyzed on a case-by-case basis.

UNRESOLVED ISSUES: On the 28th, the Commission inquired of me as to several questions. I will be prepared to orally discuss those questions and the rationale for my suggested edits to the proposed ordinance on the 12th. Final adoption would occur two weeks after provisional adoption with an effective period, as stated in the ordinance, 30 days after final adoption.

ALTERNATIVES: As directed by the Commission.

FISCAL EFFECTS: None anticipated at this time.

Attachments:

Ordinance 1890 (changes from the 4/28/14 ordinance shown in ~~strikeout~~/underline)
Ordinance 1890 (for provisional adoption)

Report compiled on: May 6, 2014



ORDINANCE NO. 1890

Suggested alterations to from Deputy Mayor Taylor's 4/28/14 draft shown in ~~strikeout~~/underline

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF BOZEMAN, MONTANA PROHIBITING DISCRIMINATION ON THE BASIS OF ACTUAL OR PERCEIVED SEXUAL ORIENTATION OR GENDER IDENTITY OR EXPRESSION, CREATING A CAUSE OF ACTION IN THE BOZEMAN MUNICIPAL COURT, AUTHORIZING THE MUNICIPAL COURT TO FASHION CIVIL REMEDIES INCLUDING INJUNCTIVE RELIEF, AND CREATING A TIME LIMIT UNDER WHICH A CLAIM MAY BE FILED, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Bozeman has adopted self-government powers as those powers are enumerated in its Charter, and the laws and Constitution of the State of Montana; and

WHEREAS, Article 1.01 of the City of Bozeman Charter states the City shall have all powers possible for a city with self-governing powers to have under the Constitution and laws of the State of Montana as fully and completely as though they were specifically enumerated in the Charter; and

WHEREAS, the City's powers include but are not limited to its police power which is its fundamental authority to enact laws on behalf of the health, safety, and general welfare of its citizens; and

WHEREAS, pursuant to Article XI, Section 6 of the Montana Constitution a local government unit adopting a self-government charter may exercise any power not prohibited by the Constitution, law, or charter; and

WHEREAS, Section 7-1-106, MCA, provides the City's power and authority are to be liberally construed, with every reasonable doubt as to the existence of the City's power or authority resolved in favor of the power or authority's existence.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF BOZEMAN, MONTANA:

Section 1

That the table of contents for Chapter 24 be revised to add Article 10 (Unlawful Discrimination) reserving Article 9, as follows:

Chapter 24 OFFENSES, MISCELLANEOUS PROVISIONS

ARTICLE 1. - IN GENERAL

ARTICLE 2. - MUNICIPAL INFRACTIONS

ARTICLE 3. - OFFENSES AGAINST GOVERNMENTAL FUNCTIONS

ARTICLE 4. - OFFENSES AGAINST PROPERTY

ARTICLE 5. - OFFENSES AGAINST PUBLIC PEACE

ARTICLE 6. - OFFENSES AGAINST PUBLIC MORALS

ARTICLE 7. - OFFENSES AGAINST PUBLIC SAFETY

ARTICLE 8. - OFFENSES CONCERNING UNDERAGE PERSONS

ARTICLE 9. – RESERVED

ARTICLE 10. – UNLAWFUL DISCRIMINATION

Section 2

That a new Article be added to Chapter 24, Bozeman Municipal Code to read as follows:

“Article 10. Unlawful Discrimination.

- Section 24.10.010 Legislative Findings
- Section 24.10.020 Policy, Purpose and Intent
- Section 24.10.030 Definitions
- Section 24.10.040 Employment and labor discrimination prohibited
- Section 24.10.050 Discrimination in public accommodations prohibited
- Section 24.10.060 Housing discrimination prohibited
- Section 24.10.070 Retaliation prohibited
- Section 24.10.080 Violation/Civil Remedy

24.10.010. Legislative Findings.

The city commission hereby finds:

- A. The matter of discrimination against the city's inhabitants and visitors is a matter of concern to the residents, visitors, and businesses of the city.

- B. The city has a compelling governmental interest in eliminating discrimination within the city and assuring its citizens equal access to publicly available goods and services. This interest includes providing its citizens a community where all persons, regardless of actual or perceived race, color, national origin, ancestry, religion, creed, sex, age, marital or familial status, physical or mental disability, sexual orientation, or gender identity or expression have a fair and equal opportunity to participate in the business and professional life of the city, and may be unfettered in availing themselves of opportunities for employment, housing, and public accommodations.

- C. Archaic and overbroad assumptions about the relative needs and capacities of individuals based on sexual orientation or gender identity or expression force those individuals to labor under stereotypical notions that often bear no relationship to their actual abilities. It thereby both deprives persons of their individual dignity and denies society the benefits of wide participation in political, economic, and cultural life.

- D. Although state and federal laws have been enacted to eliminate discrimination in employment, housing, and public accommodations on the basis of race, creed, religion, color, sex, physical or mental disability, age and national origin, it is evident that lesbian, gay, bisexual, and transgender individuals within the city have not attained equal opportunity in housing, public accommodations, and employment. A barrier to the advancement of lesbian, gay, bisexual, and transgender individuals in their personal and professional lives within the city is the potential discriminatory practices of employers and providers of public accommodations and housing on the basis of actual or perceived sexual orientation and gender identity or expression. While the vast majority of employers, housing providers, and places of public accommodations within the city certainly do not discriminate on the basis of actual or perceived sexual orientation and gender identity or expression, evidence of discriminatory practices exists within the city making it difficult for some lesbian, gay, bisexual, or transgender individuals to find satisfactory housing, obtain employment, and enjoy public accommodations free from discriminatory practices.

- E. Discrimination on the basis of actual or perceived sexual orientation and gender identity or expression impacts many citizens of the city and has an especially harmful impact to young residents and visitors to the city who may be lesbian, gay, bisexual, or transgender,

because it may force them to move from the city, not choose to attend university in the city, may impact their participation in the democratic process, and may impact their ability to fully and freely identify themselves as they seek employment, housing and the services and products provided by public accommodations.

F. Discrimination in employment has and will prevent the gainful employment of citizens of the city addressed by this article and may create breaches of the peace, impose added burdens upon the public for relief and welfare, and cause citizens, including youth, to seek employment elsewhere.

G. Discrimination in housing makes it difficult for persons addressed in this article to find housing in close proximity to urban services, educational facilities, in price ranges that are within their earning ability, and may cause citizens to seek housing outside of the city.

H. Discrimination in places of public accommodation is economically harmful to a prosperous community and is otherwise detrimental to the welfare and economic growth of the city and may cause citizens to seek public accommodations outside of the city.

I. The recognition of religious liberty and the rights of freedom of association and expression is necessary to balance the civil rights of all residents of the city; as such, provisions within this article related to fraternal, charitable, and religious organizations are intended to ensure a balanced approach to protecting civil rights of all citizens of the city so that the protections afforded by this article do not unreasonably impede upon a fraternal, charitable, or religious organization's ability to engage in activities protected by law or to disseminate its preferred views.

J. Creation of a private cause of action in the municipal court is necessary to effectuate the purpose of this article because a private cause of action will have a greater likelihood of ensuring compliance with this article than enforcement by the city due to the lack of available city resources. In addition, a private cause of action creates a viable mechanism for deterring discrimination throughout the city, empowers an individual most affected by a violation of this article to decide for themselves whether to seek relief rather than to rely on the authority of city officials, and promotes the dignity of an individual by assuring that the harmed individual receives the relief they desire for the injuries suffered.

24.10.020. Policy, Purpose and Intent.

- A. It is declared to be the policy of the City, in the exercise of its police powers pursuant to its self governing authority for the protection of the public health, safety, and general welfare, and for the maintenance of peace and good government, to assure equal opportunity to all persons, free from restrictions and discrimination because of his or her actual or perceived race, color, national origin, ancestry, religion, creed, sex, age, martial or familial status, physical or mental disability, sexual orientation, or gender identity or expression.
- ~~B. The City of Bozeman intends that no person shall be denied his or her civil rights or be discriminated against based upon his or her actual or perceived race, color, national origin, ancestry, religion, creed, sex, age, marital or familial status, physical or mental disability, sexual orientation or gender identity or expression.~~
- C.B. The city commissioners declares that, in addition to the right to be free from discrimination on the basis of race, color, national origin, ancestry, religion, creed, sex, age, martial or familial status, physical or mental disability, the right to be free from discrimination on the basis of actual or perceived sexual orientation or gender identity or expression is recognized as and hereby declared to be a civil right. Adding such discrimination prohibitions on the basis of actual or perceived sexual orientation or gender identity or expression to the city's laws are is necessary and desirable because existing state and federal laws regarding discrimination do not adequately address all discriminatory acts reported by the city's diverse residents. Therefore, the city deems it necessary to adopt local regulations adapted to the needs of its citizens.
- ~~D.C. The provisions of this article shall be liberally construed for accomplishment of its policies and purposes; provided that, however, nNothing in this Chapter article is intended to alter or abridge other rights, protections, or privileges secured by state or federal law, including state and federal constitutional protections of freedom of speech, freedom of association, and exercise of religion or to infringe upon or alter the authority vested by law in the Montana Human Rights Commission, the federal Equal Employment Opportunity Commission, or any other federal or state agency having jurisdiction over discriminatory practices.~~
- E.D. Pursuant to subsection §7-1-111(3), MCA, the provisions of the ordinance do not apply to or affect the public school system.

24.10.040. Definitions.

As used in this ~~chapter~~ article, unless the context requires otherwise, the following definitions apply:

A. ~~A.~~ “Aggrieved party” means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, and who has been or is likely to be specially and injuriously affected by a violation of this article.

~~A.B.~~ _____ ~~“Discrimination,” “discriminate” or “discriminatory” means any act, policy, or practice that has the effect of unfavorably subjecting any person to different or separate treatment because of his or her actual or perceived race, color, national origin, ancestry, religion, creed, sex, age, marital or familial status, physical or mental disability, sexual orientation, gender identity or expression, or association with a person or group of people so identified, or on the belief that a person has a particular sexual orientation or gender identity or expression, even if that belief is incorrect.~~

~~B.C.~~ _____ ~~“Employee” means an individual employed by an employer.~~

~~C.D.~~ _____ ~~“Employer” means an employer of one or more persons or an agent of the employer but excludes a fraternal, charitable, or religious association or corporation if the association or corporation is organized neither for private profit nor has as its primary purpose the provision of accommodations or services that are available on a non-membership basis.~~

~~D.E.~~ _____ ~~“Employment agency” means a person undertaking to procure employees or opportunities to work.~~

~~E.F.~~ _____ ~~“Gender identity or expression” means a gender-related identity expression, or behavior, regardless of the individual’s sex at birth.~~

~~F.G.~~ _____ ~~“Housing accommodation” means 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. It does not include dormitories or other sleeping quarters provided by universities, colleges, or other post-secondary schools.~~

~~G.H.~~ _____ ~~“Labor organization” means an organization or an agent of an organization organized for the purpose, in whole or in part, of collective bargaining, of dealing with employers concerning grievances or terms or conditions of employment, or of other mutual aid and protection of employees.~~

H.I. "Person" means one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated employees' associations, employers, employment agencies, organizations, or labor organizations.

H.J.

- a. "Public accommodation" means a place that caters to or offers its services, goods, or facilities to the general public subject only to the conditions and limitations established by law and applicable to all persons. It includes without limitation a public inn, restaurant, eating house, hotel, roadhouse, place where food or alcoholic beverages or malt liquors are sold for consumption, motel, soda fountain, soft drink parlor, tavern, nightclub, trailer park, resort, campground, barbering, cosmetology, electrology, esthetics, or manicuring salon or shop, bathroom, resthouse, theater, swimming pool, skating rink, golf course, cafe, ice cream parlor, transportation company, or hospital and all other public amusement and business establishments.
- b. "Public accommodation" does not include an institution, club, or place of accommodation that proves that it is by its nature distinctly private. An institution, club, or place of accommodation may not be considered by its nature distinctly private if it has more than 100 members, provides regular meal service, and regularly receives payment for dues, fees, use of space, facilities, services, meals, or beverages, directly or indirectly, from or on behalf of nonmembers, for the furtherance of trade or business. For the purposes of this definition, any lodge of a recognized national fraternal organization is considered by its nature distinctly private.
- c. "Public accommodation" does not include a church or other religious association or corporation, except to the extent it maintains a place described in subsection (a) other than a bathroom.
- d. "Public accommodation" does not include a private educational institution with a curriculum based in whole or in part upon religious faith.
- e. Nothing contained herein shall be construed as a requirement to construct additional facilities such as bathrooms, locker rooms, dressing rooms at any place of public accommodation as defined above.

J.K. _____ “Sexual orientation” means heterosexuality, bisexuality, or homosexuality.

24.10.040. Employment and labor discrimination prohibited.

- A. An employer shall not discriminate in the employment, failure to hire, refusal to hire, compensation, work classification, terms, conditions, or privileges of employment, including promotion, demotion, or termination of employment.
- B. An employer shall not fail or refuse to refer for employment, or give negative information to a potential employer of an individual, in such a manner that would deprive or limit an individual’s employment opportunities or that would otherwise adversely affect an individual’s status as an applicant or prospective employee, for a discriminatory reason.
- C. A labor organization shall not discriminate in limiting membership, conditions of membership, or termination of membership of any person in any labor union or apprenticeship program.
- D. An employment agency shall not discriminate in the procurement or recruitment of any person for possible employment with an employer.

24.10.050. Discrimination in public accommodations prohibited.

A place of public accommodation shall not deny, directly or indirectly, any person full and equal access or enjoyment of the goods, services, activities, facilities, privileges, advantages, and accommodations for a discriminatory reason.

24.10.060. Housing discrimination prohibited.

A person, owner, manager, employee, or any entity whose business includes engaging in any residential real estate related transactions shall not discriminate in the sale, lease or rental of any housing facility, or to otherwise discriminate in the terms, conditions, maintenance, improvement or repair of any housing facility. The rental of individual rooms in a private residence designed as a single dwelling unit in which the owner also resides is excluded from this section provided that the owner rents no more than three rooms within the residence.

24.10.070. Retaliation prohibited.

A person shall not coerce, threaten, discharge, expel, blacklist, or otherwise retaliate against another person for opposing any practices prohibited by this ~~chapter~~ article, making a complaint, or assisting in an investigation or proceeding regarding an alleged violation of this ~~chapter~~ article;

nor shall any person require, request to conspire with, assist, or coerce another person to retaliate against a person for making a complaint or assisting in an investigation or proceeding under this article.

Posting of notices.

~~Every employer, business, or entity subject to this chapter shall post in a conspicuous location a notice stating, "Discrimination on the basis of actual or perceived race, color, national origin, ancestry, religion, creed, sex, age, marital or familial status, physical or mental disability, sexual orientation, gender identity or expression is prohibited by the Bozeman Municipal Code." Entities subject to this chapter may provide the notice by posting it where employee notices are customarily placed.~~

24.10.080. Violation/Civil RemedyPenalty.

~~A. Any illegal-unlawful discrimination specifically addressed by Montana State law shall be submitted to the Montana Department of Labor pursuant to Title 49, Chapters 2 and 3, Montana Code Annotated for processing by the State of Montana.~~

~~A.B. Pursuant to sections 3-6-103 and 3-11-103 Montana Code Annotated Vviolations of sections 24.10.040 through 24.10.070 Bozeman Municipal Code not-unless otherwise specifically addressed bysubject to Montana State law, are to be civil municipal ordinance violations. Only the person claiming a violation of one or more these sections, or that person's authorized representative, may seek enforcement of this chapter through a civil proceeding within the exclusive jurisdiction of the bBozeman mMunicipal cCourt. The Montana Rules of Civil Procedure shall apply, except and unless the Bozeman mMunicipal cCourt establishes alternative rules of civil procedure for matters within the exclusive jurisdiction of the Bozeman mMunicipal cCourt.~~

~~C. A personAn aggrieved party or its authorized representative claiming a violation of this chapter article may seek civil remedies, injunctive relief, attorney fees, incurred in the bringing of said claim, or other equitable relief against a person alleged to have committed discrimination by petitioning the bBozeman mMunicipal cCourt. The municipal court is hereby authorized to determine appropriate remedies including but not limited to injunctive relief. Any aggrieved party claiming a violation of this article shall seek such relief within:~~

1. 180 days after the alleged unlawful discriminatory practice occurred or was discovered;

2. If the aggrieved party has initiated efforts to resolve the dispute addressed in the petition by filing a grievance in accordance with any grievance procedure established by a collective bargaining agreement, contract, or written rule or policy, the petition may be filed within 180 days after the conclusion of the grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful discriminatory practice occurred or was discovered; or
3. If the grievance procedure does not conclude within 120 days, the petition must be filed within 300 days after the alleged unlawful discriminatory practice occurred or was discovered.

D. The initiation of or granting of relief under a grievance procedure shall not preclude or limit any other claims or remedies available under this chapter/article.

E. The prevailing party in a proceeding pursuant to this article may bring an action in the municipal court for attorney fees and costs and the municipal court may, in its discretion, allow the prevailing party reasonable attorney fees and costs.

Section 3

Repealer.

All provisions of the ordinances of the City of Bozeman in conflict with the provisions of this ordinance are, and the same are hereby, repealed and all other provisions of the ordinances of the City of Bozeman not in conflict with the provisions of this ordinance shall remain in full force and effect.

Section 4

Savings Provision.

This ordinance does not affect the rights and duties that matured, penalties that were incurred or proceedings that were begun before the effective date of this ordinance. All other provisions of the Bozeman Municipal Code not amended by this Ordinance shall remain in full force and effect.

Section 5

Severability.

That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal, or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof, other than the part so

Ordinance No. 1890, Prohibiting Unlawful Discrimination

decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Bozeman Municipal Code as a whole.

Section 6

Codification.

This Ordinance shall be codified as indicated in Section 1 and 2.

Section 7

Effective Date.

This ordinance shall be in full force and effect thirty (30) days after final adoption.

REFERENCE ONLY



ORDINANCE NO. 1890

For provisional adoption on 5/12/14

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF BOZEMAN, MONTANA PROHIBITING DISCRIMINATION ON THE BASIS OF ACTUAL OR PERCEIVED SEXUAL ORIENTATION OR GENDER IDENTITY OR EXPRESSION, CREATING A CAUSE OF ACTION IN THE BOZEMAN MUNICIPAL COURT, AUTHORIZING THE MUNICIPAL COURT TO FASHION CIVIL REMEDIES INCLUDING INJUNCTIVE RELIEF, AND CREATING A TIME LIMIT UNDER WHICH A CLAIM MAY BE FILED, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Bozeman has adopted self-government powers as those powers are enumerated in its Charter, and the laws and Constitution of the State of Montana; and

WHEREAS, Article 1.01 of the City of Bozeman Charter states the City shall have all powers possible for a city with self-governing powers to have under the Constitution and laws of the State of Montana as fully and completely as though they were specifically enumerated in the Charter; and

WHEREAS, the City's powers include but are not limited to its police power which is its fundamental authority to enact laws on behalf of the health, safety, and general welfare of its citizens; and

WHEREAS, pursuant to Article XI, Section 6 of the Montana Constitution a local government unit adopting a self-government charter may exercise any power not prohibited by the Constitution, law, or charter; and

WHEREAS, Section 7-1-106, MCA, provides the City's power and authority are to be liberally construed, with every reasonable doubt as to the existence of the City's power or authority resolved in favor of the power or authority's existence.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF BOZEMAN, MONTANA:

Section 1

That the table of contents for Chapter 24 be revised to add Article 10 (Unlawful Discrimination) reserving Article 9, as follows:

Chapter 24 OFFENSES, MISCELLANEOUS PROVISIONS

ARTICLE 1. - IN GENERAL

ARTICLE 2. - MUNICIPAL INFRACTIONS

ARTICLE 3. - OFFENSES AGAINST GOVERNMENTAL FUNCTIONS

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ARTICLE 5. - OFFENSES AGAINST PUBLIC PEACE

ARTICLE 6. - OFFENSES AGAINST PUBLIC MORALS

ARTICLE 7. - OFFENSES AGAINST PUBLIC SAFETY

ARTICLE 8. - OFFENSES CONCERNING UNDERAGE PERSONS

ARTICLE 9. – RESERVED

ARTICLE 10. – UNLAWFUL DISCRIMINATION

Section 2

That a new Article be added to Chapter 24, Bozeman Municipal Code to read as follows:

“Article 10. Unlawful Discrimination.

Section 24.10.010	Legislative Findings
Section 24.10.020	Policy, Purpose and Intent
Section 24.10.030	Definitions
Section 24.10.040	Employment and labor discrimination prohibited
Section 24.10.050	Discrimination in public accommodations prohibited
Section 24.10.060	Housing discrimination prohibited
Section 24.10.070	Retaliation prohibited
Section 24.10.080	Violation/Civil Remedy

24.10.010. Legislative Findings.

The city commission hereby finds:

- A. The matter of discrimination against the city's inhabitants and visitors is a matter of concern to the residents, visitors, and businesses of the city.
- B. The city has a compelling governmental interest in eliminating discrimination within the city and assuring its citizens equal access to publicly available goods and services. This interest includes providing its citizens a community where all persons, regardless of actual or perceived race, color, national origin, ancestry, religion, creed, sex, age, marital or familial status, physical or mental disability, sexual orientation, or gender identity or expression have a fair and equal opportunity to participate in the business and professional life of the city, and may be unfettered in availing themselves of opportunities for employment, housing, and public accommodations.
- C. Archaic and overbroad assumptions about the relative needs and capacities of individuals based on sexual orientation or gender identity or expression force those individuals to labor under stereotypical notions that often bear no relationship to their actual abilities. It thereby both deprives persons of their individual dignity and denies society the benefits of wide participation in political, economic, and cultural life.
- D. Although state and federal laws have been enacted to eliminate discrimination in employment, housing, and public accommodations on the basis of race, creed, religion, color, sex, physical or mental disability, age and national origin, it is evident that lesbian, gay, bisexual, and transgender individuals within the city have not attained equal opportunity in housing, public accommodations, and employment. A barrier to the advancement of lesbian, gay, bisexual, and transgender individuals in their personal and professional lives within the city is the potential discriminatory practices of employers and providers of public accommodations and housing on the basis of actual or perceived sexual orientation and gender identity or expression. While the vast majority of employers, housing providers, and places of public accommodations within the city certainly do not discriminate on the basis of actual or perceived sexual orientation and gender identity or expression, evidence of discriminatory practices exists within the city making it difficult for some lesbian, gay, bisexual, or transgender individuals to find satisfactory housing, obtain employment, and enjoy public accommodations free from discriminatory practices.
- E. Discrimination on the basis of actual or perceived sexual orientation and gender identity or expression impacts many citizens of the city and has an especially harmful impact to young residents and visitors to the city who may be lesbian, gay, bisexual, or transgender, because it may force them to move from the city, not choose to attend university in the

Ordinance No. 1890, Prohibiting Unlawful Discrimination

city, may impact their participation in the democratic process, and may impact their ability to fully and freely identify themselves as they seek employment, housing and the services and products provided by public accommodations.

- F. Discrimination in employment has and will prevent the gainful employment of citizens of the city addressed by this article and may create breaches of the peace, impose added burdens upon the public for relief and welfare, and cause citizens, including youth, to seek employment elsewhere.
- G. Discrimination in housing makes it difficult for persons addressed in this article to find housing in close proximity to urban services, educational facilities, in price ranges that are within their earning ability, and may cause citizens to seek housing outside of the city.
- H. Discrimination in places of public accommodation is economically harmful to a prosperous community and is otherwise detrimental to the welfare and economic growth of the city and may cause citizens to seek public accommodations outside of the city.
- I. The recognition of religious liberty and the rights of freedom of association and expression is necessary to balance the civil rights of all residents of the city; as such, provisions within this article related to fraternal, charitable, and religious organizations are intended to ensure a balanced approach to protecting civil rights of all citizens of the city so that the protections afforded by this article do not unreasonably impede upon a fraternal, charitable, or religious organization's ability to engage in activities protected by law or to disseminate its preferred views.
- J. Creation of a private cause of action in the municipal court is necessary to effectuate the purpose of this article because a private cause of action will have a greater likelihood of ensuring compliance with this article than enforcement by the city due to the lack of available city resources. In addition, a private cause of action creates a viable mechanism for deterring discrimination throughout the city, empowers an individual most affected by a violation of this article to decide for themselves whether to seek relief rather than to rely on the authority of city officials, and promotes the dignity of an individual by assuring that the harmed individual receives the relief they desire for the injuries suffered.

24.10.020. Policy, Purpose and Intent.

- A. It is declared to be the policy of the City, in the exercise of its police powers pursuant to its self governing authority for the protection of the public health, safety, and general welfare, and for the maintenance of peace and good government, to assure equal

Ordinance No. 1890, Prohibiting Unlawful Discrimination

opportunity to all persons, free from restrictions and discrimination because of his or her actual or perceived race, color, national origin, ancestry, religion, creed, sex, age, marital or familial status, physical or mental disability, sexual orientation, or gender identity or expression.

- B. The city commission declares that, in addition to the right to be free from discrimination on the basis of race, color, national origin, ancestry, religion, creed, sex, age, marital or familial status, physical or mental disability, the right to be free from discrimination on the basis of actual or perceived sexual orientation or gender identity or expression is recognized as and hereby declared to be a civil right. Adding such discrimination prohibitions on the basis of actual or perceived sexual orientation or gender identity or expression to the city's laws is necessary and desirable because existing state and federal laws regarding discrimination do not adequately address all discriminatory acts reported by the city's diverse residents.
- C. The provisions of this article shall be liberally construed for accomplishment of its policies and purposes; provided that, however, nothing in this article is intended to alter or abridge other rights, protections, or privileges secured by state or federal law, including state and federal constitutional protections of freedom of speech, freedom of association, and exercise of religion or to infringe upon or alter the authority vested by law in the Montana Human Rights Commission, the federal Equal Employment Opportunity Commission, or any other federal or state agency having jurisdiction over discriminatory practices.
- D. Pursuant to subsection §7-1-111(3), MCA, the provisions of the ordinance do not apply to or affect the public school system.

24.10.040. Definitions.

As used in this article, unless the context requires otherwise, the following definitions apply:

- A. "Aggrieved party" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, and who has been or is likely to be specially and injuriously affected by a violation of this article.
- B. "Discrimination," "discriminate" or "discriminatory" means any act, policy, or practice that has the effect of unfavorably subjecting any person to different or separate treatment because of his or her actual or perceived sexual orientation, gender identity or expression, or association with a person or group of people so identified, or on the belief that a person

Ordinance No. 1890, Prohibiting Unlawful Discrimination

has a particular sexual orientation or gender identity or expression, even if that belief is incorrect.

- C. "Employee" means an individual employed by an employer.
- D. "Employer" means an employer of one or more persons or an agent of the employer but excludes a fraternal, charitable, or religious association or corporation if the association or corporation is organized neither for private profit nor has as its primary purpose the provision of accommodations or services that are available on a non-membership basis.
- E. "Employment agency" means a person undertaking to procure employees or opportunities to work.
- F. "Gender identity or expression" means a gender-related identity expression, or behavior, regardless of the individual's sex at birth.
- G. "Housing accommodation" means 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. It does not include dormitories or other sleeping quarters provided by universities, colleges, or other post-secondary schools.
- H. "Labor organization" means an organization or an agent of an organization organized for the purpose, in whole or in part, of collective bargaining, of dealing with employers concerning grievances or terms or conditions of employment, or of other mutual aid and protection of employees.
- I. "Person" means one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated employees' associations, employers, employment agencies, organizations, or labor organizations.
- J.
 - a. "Public accommodation" means a place that caters to or offers its services, goods, or facilities to the general public subject only to the conditions and limitations established by law and applicable to all persons. It includes without limitation a public inn, restaurant, eating house, hotel, roadhouse, place where food or alcoholic beverages or malt liquors are sold for consumption, motel, soda fountain, soft drink parlor, tavern, nightclub, trailer park, resort, campground, barbering, cosmetology, electrology, esthetics, or manicuring salon or shop, bathroom, resthouse, theater, swimming pool, skating rink, golf course, cafe, ice

Ordinance No. 1890, Prohibiting Unlawful Discrimination

cream parlor, transportation company, or hospital and all other public amusement and business establishments.

- b. "Public accommodation" does not include an institution, club, or place of accommodation that proves that it is by its nature distinctly private. An institution, club, or place of accommodation may not be considered by its nature distinctly private if it has more than 100 members, provides regular meal service, and regularly receives payment for dues, fees, use of space, facilities, services, meals, or beverages, directly or indirectly, from or on behalf of nonmembers, for the furtherance of trade or business. For the purposes of this definition, any lodge of a recognized national fraternal organization is considered by its nature distinctly private.
- c. "Public accommodation" does not include a church or other religious association or corporation, except to the extent it maintains a place described in subsection (a) other than a bathroom.
- d. "Public accommodation" does not include a private educational institution with a curriculum based in whole or in part upon religious faith.
- e. Nothing contained herein shall be construed as a requirement to construct additional facilities such as bathrooms, locker rooms, dressing rooms at any place of public accommodation as defined above.

K. "Sexual orientation" means heterosexuality, bisexuality, or homosexuality.

24.10.040. Employment and labor discrimination prohibited.

- A. An employer shall not discriminate in the employment, failure to hire, refusal to hire, compensation, work classification, terms, conditions, or privileges of employment, including promotion, demotion, or termination of employment.
- B. An employer shall not fail or refuse to refer for employment, or give negative information to a potential employer of an individual, in such a manner that would deprive or limit an individual's employment opportunities or that would otherwise adversely affect an individual's status as an applicant or prospective employee, for a discriminatory reason.

Ordinance No. 1890, Prohibiting Unlawful Discrimination

- C. A labor organization shall not discriminate in limiting membership, conditions of membership, or termination of membership of any person in any labor union or apprenticeship program.
- D. An employment agency shall not discriminate in the procurement or recruitment of any person for possible employment with an employer.

24.10.050. Discrimination in public accommodations prohibited.

A place of public accommodation shall not deny, directly or indirectly, any person full and equal access or enjoyment of the goods, services, activities, facilities, privileges, advantages, and accommodations for a discriminatory reason.

24.10.060. Housing discrimination prohibited.

A person, owner, manager, employee, or any entity whose business includes engaging in any residential real estate related transactions shall not discriminate in the sale, lease or rental of any housing facility, or to otherwise discriminate in the terms, conditions, maintenance, improvement or repair of any housing facility. The rental of individual rooms in a private residence designed as a single dwelling unit in which the owner also resides is excluded from this section provided that the owner rents no more than three rooms within the residence.

24.10.070. Retaliation prohibited.

A person shall not coerce, threaten, discharge, expel, blacklist, or otherwise retaliate against another person for opposing any practices prohibited by this article, making a complaint, or assisting in an investigation or proceeding regarding an alleged violation of this article; nor shall any person require, request to conspire with, assist, or coerce another person to retaliate against a person for making a complaint or assisting in an investigation or proceeding under this article.

24.10.080. Violation/Civil Remedy.

- A. Any unlawful discrimination addressed by Montana State law shall be submitted to the Montana Department of Labor pursuant to Title 49, Chapters 2 and 3, Montana Code Annotated.
- B. Violations of sections 24.10.040 through 24.10.070 unless otherwise subject to Montana State law, are to be civil municipal ordinance violations within the exclusive jurisdiction of the Bozeman municipal court. The Montana Rules of Civil Procedure shall apply,

except and unless the municipal court establishes alternative rules of civil procedure for matters within the exclusive jurisdiction of the municipal court.

- C. An aggrieved party or its authorized representative claiming a violation of this article may seek civil remedies, injunctive relief, or other equitable relief against a person alleged to have committed discrimination by petitioning the bozeman municipal court. The municipal court is hereby authorized to determine appropriate remedies including but not limited to injunctive relief. Any aggrieved party claiming a violation of this article shall seek such relief within:
1. 180 days after the alleged unlawful discriminatory practice occurred or was discovered;
 2. If the aggrieved party has initiated efforts to resolve the dispute addressed in the petition by filing a grievance in accordance with any grievance procedure established by a collective bargaining agreement, contract, or written rule or policy, the petition may be filed within 180 days after the conclusion of the grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful discriminatory practice occurred or was discovered; or
 3. If the grievance procedure does not conclude within 120 days, the petition must be filed within 300 days after the alleged unlawful discriminatory practice occurred or was discovered.
- D. The initiation of or granting of relief under a grievance procedure shall not preclude or limit any other claims or remedies available under this article.
- E. The prevailing party in a proceeding pursuant to this article may bring an action in the municipal court for attorney fees and costs and the municipal court may, in its discretion, allow the prevailing party reasonable attorney fees and costs.

Section 3

Repealer.

All provisions of the ordinances of the City of Bozeman in conflict with the provisions of this ordinance are, and the same are hereby, repealed and all other provisions of the ordinances of the City of Bozeman not in conflict with the provisions of this ordinance shall remain in full force and effect.

Section 4

Savings Provision.

This ordinance does not affect the rights and duties that matured, penalties that were incurred or proceedings that were begun before the effective date of this ordinance. All other provisions of the Bozeman Municipal Code not amended by this Ordinance shall remain in full force and effect.

Section 5

Severability.

That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal, or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof, other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Bozeman Municipal Code as a whole.

Section 6

Codification.

This Ordinance shall be codified as indicated in Section 1 and 2.

Section 7

Effective Date.

This ordinance shall be in full force and effect thirty (30) days after final adoption.

End of Ordinance except for signatures

Ordinance No. 1890, Prohibiting Unlawful Discrimination

PROVISIONALLY ADOPTED by the City Commission of the City of Bozeman, Montana, on first reading at a regular session held on the ____ day of _____, 201_.

JEFFREY K. KRAUSS
Mayor

ATTEST:

STACY ULMEN, CMC
City Clerk

FINALLY PASSED, ADOPTED AND APPROVED by the City Commission of the City of Bozeman, Montana on second reading at a regular session thereof held on the ___ of _____, 201_. The effective date of this ordinance is _____, __, 201_.

JEFFREY K. KRAUSS
Mayor

ATTEST:

STACY ULMEN, CMC
City Clerk

APPROVED AS TO FORM:

GREG SULLIVAN
City Attorney