

ORDINANCE NO. 15-5109

AN ORDINANCE OF THE CITY OF SARASOTA, FLORIDA, AMENDING THE SARASOTA CITY CODE, CHAPTER 18, "HUMAN RELATIONS," ARTICLE I, "IN GENERAL," SECTION 18-2, "DEFINITIONS," TO CLARIFY THAT DISCRIMINATION ON THE BASIS OF GENDER INCLUDES DISCRIMINATION ON THE BASIS OF GENDER IDENTITY AND EXPRESSION; PROVIDING FOR SEVERABILITY IF ANY OF THE PARTS HEREOF ARE DECLARED INVALID; PROVIDING FOR READING BY TITLE ONLY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 18 was amended in 2003 to implement Article I, Section 5 of the City Charter, which secures for all individuals within the city freedom from discrimination based on age, color, disability, gender, marital status, national origin, race, religion, sexual orientation or veterans status; and

WHEREAS, since 2003, the City has directed its efforts and resources toward eliminating discriminatory practices that exist within the city in the areas of housing, employment and public accommodations; and

WHEREAS, the City's anti-discrimination policies protect basic human rights and privileges, encourage personal dignity and self-worth and strive to create a diverse and tolerant community; and

WHEREAS, the City wishes to amend Chapter 18 to make it clear that its prohibition against gender discrimination includes discrimination against transgender persons and other individuals who suffer from discrimination on the basis of gender identity and gender expression; and

WHEREAS, pursuant to Sec. 18-1(c), Chapter 18 is to be construed in accordance with decisions interpreting similar provisions of federal and state law; and

WHEREAS, the Equal Employment Opportunity Commission held in *Macy v. Department of Justice* that discrimination based on gender identity, change of sex, and/or transgender status is discrimination based on sex and is therefore covered under Title VII of the Civil Rights Act of 1964; and

WHEREAS, the 11th Circuit of the U.S. Court of Appeals held in *Glenn v. Brumby* that an employer violated the U.S. Constitution's Equal Protection Clause when it fired a transgender employee who was born a biological male because she appeared and behaved like a woman; and

WHEREAS, the 11th Circuit clarified in *Glenn v. Brumby* that discrimination against a transgender individual because of her gender non-conformity is sex discrimination under Title VII of the Civil Rights Act, whether it's described as being on the basis of sex or gender; and

WHEREAS, the 11th Circuit further held that "All persons, whether transgender or not, are protected from discrimination on the basis of gender stereotype;" and

WHEREAS, the City wishes to revise the definition of "gender" contained in Chapter 18 to prohibit discrimination based on gender-nonconformity and gender stereotypes that presume that men's and women's appearance and behavior is determined by their sex;

NOW THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF SARASOTA, FLORIDA:

Section 1: The Sarasota City Code, Chapter 18, "Human Relations," Article I, "In General," Section 18-2, "Definitions," is hereby amended to read as follows: (New text is indicated by underline. Deleted text is indicated by ~~strike through~~.)

"Sec. 18-1. Declaration of policy.

- (a) It is the desire of the city commission to foster and encourage the growth and development of the city in a manner that will assure all persons an equal opportunity to live free of discrimination imposed by age, color, disability, gender, marital status, national origin, race, religion, sexual orientation or veterans status. Discriminatory practices are contrary to the public policy of the city and are a menace to the public peace and welfare of our citizens. The city shall direct its efforts and resources toward eliminating discriminatory practices within the city in the areas of housing, employment and public accommodations where they exist.

- (b) The general purpose of this chapter is to implement article I, section 5 of the City Charter so as to secure for all individuals within the city freedom from discrimination because of age, color, disability, gender, marital status, national origin, race, religion, sexual orientation or veterans status and thereby to protect their interest in personal dignity, to make available to the city their full productive capacities, to secure the city against domestic strife and unrest, to preserve the public safety, health, and general welfare, and to promote the interests, rights, and privileges of individuals within the city.

- (c) This chapter shall be construed in accordance with decisions interpreting similar provisions of federal and state law and according to the fair import of its terms and shall be liberally construed to further the general purposes stated in this section and the special purposes of the particular provision involved.

Sec. 18-2. Definitions.

The following words and phrases, when used in this chapter, shall have the following meanings:

Age means that prohibitions on discriminatory practices with regard to age shall be limited to persons who have attained the age of majority.

Aggrieved person means any person who files a complaint with the human relations board.

Board means the City of Sarasota human relations board created by this chapter.

Conciliation means the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the respondent, and the city.

Disability, disabled person is used interchangeably with the term handicapped or handicapped person and means a person who has a physical or mental impairment which substantially limits one or more of such person's major life activities; has a record of such impairment; or is regarded as having such an impairment, but such term shall not include current, illegal use of or addiction to a controlled substance as defined in federal law (section 802 of title 21) or state law (F.S. ch. 893). A disabled person does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of employment, or whose employment, by reason of such current alcohol or drug abuse would constitute a direct threat to property or the safety of others.

Discriminatory practice means any practice made unlawful by this chapter.

Entity means employee, employer, employment agency, financial institution, labor organization, mortgage broker, owner, person, real estate broker, real estate sales agent or joint labor-management committee as used or defined in this chapter.

Gender is used interchangeably with sex and means the state of being male, or female, or transgender. The term encompasses gender-related identity (self-identification as any or no particular gender) and gender

expression (through one's appearance or behavior) regardless of an individual's assigned sex at birth.

Marital status means the state of being unmarried, married, or separated, as defined by state law. The term "unmarried" includes persons who are single, divorced or widowed.

Member means a member of the board.

National origin includes ancestry.

Person includes an individual, association, corporation, joint apprenticeship committee, joint-stock company, labor union, legal representative, mutual company, partnership, receiver, trust, trustee in bankruptcy, or unincorporated organization; any other legal or commercial entity; the state; or any governmental entity or agency.

Prevailing party shall have the same meaning as such term has in 42 U.S.C. § 1988.

Race means a large group of persons related by common descent, blood, or heredity.

Religion means all aspects of religious observance, practice, and belief.

Respondent means the person or other entity accused in a complaint of an act of discrimination prohibited by this chapter.

Sexual orientation means having an orientation, or being identified as having an orientation, for male or female homosexuality, heterosexuality, or bisexuality.

Unlawful discriminatory practice means a practice prohibited under the provisions of this chapter.

Veterans status means the status of being a person who served in the active military, naval, or air service and who was discharged or released there from under honorable conditions only or who later received an upgraded discharge under honorable conditions, notwithstanding any action by the United States Department of Veterans Affairs on individuals discharged or released with other than honorable discharges."

Section 2: Should any section, sentence, clause, part or provision of this Ordinance be declared invalid or unenforceable by a court of competent jurisdiction, the same shall not affect the validity of this Ordinance as a whole, or any part hereof other

than the part declared to be invalid. Said provision declared to be invalid shall be deemed severed from the remaining provisions of this Ordinance.

Section 3: Ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4: This ordinance shall take effect immediately upon second reading.

PASSED on first reading by title only, after posting on the bulletin board at City Hall for at least three (3) days prior to first reading, as authorized by Article IV, Section 2, Charter of the City of Sarasota, Florida this 3rd day of November, 2014.

PASSED on second reading and finally adopted this 17th day of November, 2014.

CITY OF SARASOTA, FLORIDA


Willie Charles Shaw, Mayor

ATTEST:



Pamela M. Nadalini, MBA, CMC
City Auditor & Clerk

Yes Mayor Willie Charles Shaw

Yes Vice Mayor Susan Chapman

Yes Commissioner Suzanne Atwell

Yes Commissioner Paul Caragiulo

Yes Commissioner Shannon Snyder