

ORDINANCE NO. 16,083

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, by amending Sections 62-1, 62-42, 62-72, 62-103, 62-137 and adding Sections 62-71.1, 62-136.1, Article VII, Sections 62-172, 62-173, and Article VII, Section 62-191, relating to additional power of the human rights commission to engage in voluntary community mediation, additional human rights illegal discriminatory practices, and amended exemptions and definitions.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, by amending Sections 62-1, 62-42, 62-72, 62-103, 62-137 and adding Sections 62-71.1, 62-136.1, Article VII, Sections 62-172, 62-173, and Article VII, Section 62-191, relating to additional power of the human rights commission to engage in voluntary community mediation, additional human rights illegal discriminatory practices, and amended exemptions and definitions, as follows:

Sec. 62-1. 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:

Arrest means the taking of a person into custody when and in the manner authorized by law or military authority due to an accusation or suspicion that the person committed a crime.

City Manager means the city manager of the City of Des Moines, or his or her designee, or any acting or interim city manager.

Commission or human rights commission means the Des Moines Human Rights Commission.

Conviction means any adjudication of guilt or sentence arising from a verdict or plea of guilty or no contest or the equivalent in relation to a crime, including a sentence of incarceration, a suspended sentence, a sentence of probation, a sentence of unconditional discharge, or a diversion program.

Criminal record means information regarding a conviction, arrest, or pending criminal charge.

Covered multifamily dwelling means:

- (1) A building consisting of four or more units of such building having one or more elevators; and
- (2) Ground floor units in other buildings consisting of four or more units.

Disability means the physical or mental impairment that substantially limits one or more of the major life activities of a person; a record of this impairment; or being regarded as having such an impairment. Disability does not include current, illegal use of or addiction to a controlled substance as defined in section 102 of the Controlled Substance Act (21 USC 802). In reference to employment, under this chapter, the term "disability" also means the physical or mental condition of a person which constitutes a substantial handicap, but is unrelated to such person's ability to engage in a particular occupation.

Discriminate, discrimination, or discriminatory means any significant and unreasonable difference in treatment because of age, race, religion, creed, color, sex, sexual orientation, gender identity, national origin, ancestry, disability or familial status and includes any and all of the illegal discriminatory practices enumerated in this chapter. This term shall also mean to separate, to segregate, or to make a distinction against any persons, because of age, race, religion, creed, color, sex, sexual orientation, gender identity, national origin, ancestry, disability or familial status. This term shall also include any significant and unreasonable difference in treatment because of a person's association with another of a different age, race, religion, creed, color, sex, sexual orientation, gender identity, national origin, ancestry, disability or familial status. This term also means any additional protected class or classes as are identified and/or defined by Iowa Code Chapter 216.

Dwelling means any building, structure, or portion thereof, including but not limited to trailer courts, trailer parks, or mobile home courts, whether such building or portion is constructed or is to be constructed, which is occupied as or designed or intended for occupancy as a residence or sleeping place of one or more persons or families and any vacant land or real estate which is offered for sale, rent, or lease for the construction or location thereof of any such building, structure, or portion thereof or real property usable for purposes of human habitation or for the construction thereon of a residential facility.

Educational institution includes any preschool, elementary or secondary school, community college, area education agency, or postsecondary college or university and their governing boards.

Employee includes any person employed by an employer but does not include an individual employed by that person's parents, spouse, or child or in the domestic service of any person.

Employer includes, but is not limited to, any person in this city employing four or more persons; any person acting directly or indirectly for an employer; and the city and any other governmental entity or any board, commission, department, or agency thereof employing persons whose employment or any part thereof is within this city.

Employment agency includes any person or governmental agency undertaking, with or without compensation, to procure employees or opportunities to work, or to procure, recruit, refer, or place employees or any person holding itself equipped to do so.

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
- (2) The designee of such parent or other person having such custody of the individual, 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 18 years.

Financial institution includes any person regularly engaged in the business of lending money or guaranteeing such loans on dwellings.

Gender identity means a gender-related identity of a person, regardless of the person's assigned sex at birth.

Illegal discriminatory practice means those practices specified as illegal or discriminatory in articles III and V of this chapter and in sections 62-101, 62-102, 62-103, 62-104, 62-166, 62-168, 62-169 of this chapter or as otherwise specified as illegal in this chapter.

Inquiry means any direct or indirect conduct intended to gather information, using any mode of communication, including but not limited to a box or blank that seeks to elicit information about an applicant's criminal record on an employment application form.

Interview means any direct contact by the employer with the applicant, whether in person or by telephone, to discuss the employment being sought or the applicant's qualifications.

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

Non-violent misdemeanor offense means a misdemeanor offense excluding an offense involving assault, disorderly conduct, harassment in the first or second degree, interference with official acts, animal abuse, animal torture, or sexually predatory offense.

Owner includes the owner, lessee, sublessee, assignee, agent, or other person having the right to sell, rent, lease, or transfer any housing accommodation or real property within the corporate limits.

Pending criminal charge means an existing accusation that a person has committed a crime, lodged by a prosecutor, law enforcement agency or military authority through an indictment, complaint, or other formal charge, where the accusation has not yet resulted in a final judgment, acquittal, conviction, plea, dismissal or withdrawal.

Person includes, but is not limited to, one or more individuals, partnerships, associations, labor organizations, corporations, legal representatives, mutual companies, trusts, trustees, trustees in bankruptcy or receivers, fiduciaries, joint stock companies, unincorporated organizations, and the state, county and city and any other governmental entity and any of their respective departments, divisions, boards, commissions, officials, agents and employees.

Public accommodations includes any person who caters or offers his or her goods, services, facilities, privileges, advantages, and accommodations to the public, (including but not limited to) state and local governmental units and tax-supported district of whatever kind. (see Iowa Code §216.2(a)(12))

Real estate broker includes any person, licensed or not, who, either for a fee or other valuable consideration or without fee, sells, purchases, exchanges, rents, negotiates, or attempts to negotiate the sale, purchase, exchange, or rental of a dwelling as a regular practice, whether for himself or herself or another person, or who acts as a go-between for a would-be-purchaser and seller of a dwelling.

Real estate salesperson or agent includes any person, licensed or not, employed by a real estate broker to perform or to assist in the performance of any or all of the functions of a real estate broker, whether individually or for another person, or who acts as a go-between for would-be-purchasers and sellers of housing accommodations or real property on behalf of a real estate broker or individually.

Respondent means the person accused in any illegal discriminatory practices and any other person identified in the course of investigation and notified as required.

Sex means gender. It includes but is not limited to pregnancy, childbirth, and related medical conditions; and women affected by pregnancy, childbirth or related medical conditions shall be treated the same for all purposes covered by this chapter.

Sexual orientation means actual or perceived heterosexuality, homosexuality or bisexuality. *Sexual orientation* does not include participation in acts which are prohibited by law.

Source of income means money, funds, income, and support, payable directly or indirectly to or on behalf of a renter or buyer of housing, derived from any pension, annuity, child support, or alimony, or any tax supported Federal, State or local funds, including but not limited to, social security, supplemental security income, temporary assistance for needy families, family investment program, general relief, food stamps, unemployment compensation, housing choice voucher rent subsidies, and similar rent subsidy programs.

Sec. 62-42. Powers and duties of commission and director.

(a) The human rights commission shall have the power and duty to:

....

(20) Engage in community mediation of matters, disagreements or disputes among persons the subject of which are voluntarily submitted to the commission by all involved parties pursuant to section 62-191 of this chapter.

....

Sec. 62-71.1. Criminal record inquiry for employment purposes.

(a) In connection with the proposed employment of any person, it shall be an illegal discriminatory employment practice for an employer to include a criminal record inquiry on any application for employment. It shall further be an illegal discriminatory employment practice for an employer, but not private schools providing a regular course of instruction for any part of kindergarten through high school education, to engage in any of the following activity:

(1) To make any inquiry regarding or to require any person to disclose or reveal any convictions, arrests, or pending criminal charges during the application process, including but not limited to any interview. However, if the applicant voluntarily discloses any information regarding the applicant's criminal record at the interview, the employer may discuss the criminal record disclosed by the applicant.

The application process shall begin when the applicant inquiries about the employment being sought and shall end when an employer has extended a conditional offer of employment to the applicant.

- (b) Employers shall comply with any obligations arising under federal or state law relating to authorization for background checks, notifying applicants about adverse hiring decisions based on an applicant's criminal history, and any other matters involving use of criminal record information.

Sec. 62-72. Exemptions.

Nothing in this article shall be construed to apply to the following:

- (1) The employment of individuals to render personal service to the person or the employer or members of the employer's family.
- (2) Any employer who regularly employs fewer than four individuals. For purposes of this chapter, individuals who are members of the employer's family shall not be counted as employees.
- (3) The employment of individuals for work within the home of the employer if the employer or members of the employer's family reside therein during such employment.
- (4) Any exempt qualifications for employment imposed by a bona fide religious institution or its educational facility, association, corporation, or society as specified in I.C. subsection 216.6(6)(d).

Nothing in section 62-71.1 shall be constructed to apply to the following:

- (5) the United States or any agency thereof.
- (6) the state or any of its political subdivisions other than the city.
- (7) Any employer inquiry on an application or in an interview that is required by federal or state law or regulation.

Sec. 62-103. Exemptions; Applicability.

(a) Nothing in sections 62-101 and 62-102 of this article shall be construed to apply to the following:

- (1) The rental or leasing of a dwelling in a building which contains dwellings for not more than two families living independently of each other, if the owner resides in one of such dwellings.
- (2) Any exempt qualifications imposed by a bona fide religious institution as specified in I.C. subsection 216.12(1)(a).
- (3) The rental or leasing of less than four rooms within a single dwelling by the occupant or owner of such dwelling, if the occupant or owner resides in the dwelling.
- (4) The rental or leasing of a dwelling within which residents of both sexes must share a common bathroom facility on the same floor of the building. This exemption does not apply to race, color, creed, religion, sexual orientation, gender identity, national origin, ancestry, disability or familial status basis, or on the basis of source of income.
- (5) The rental or leasing of a dwelling in a building which contains dwellings for not more than four families living independently of each other, if the owner resides in one of the dwellings for which the owner qualifies for the homestead tax credit under I.C. § 425.1.

....

Sec. 62-136.1. Commercial Tenancy Discrimination

It shall be an illegal discriminatory practice for any person, owner, lessor, lessee, sublessee, proprietor, manager, superintendent, agent, or employee of any commercial space to refuse or deny to any person because of race, religion, creed, color, sex, sexual orientation, gender identity, national origin, ancestry or disability the rental, leasing, subleasing, licensing, transferring, use, occupancy, tenure or enjoyment, of commercial space or the beneficial use of its facilities, goods, services, or privileges thereof or otherwise discriminate, separate, segregate or make a distinction against any person because of race, religion, creed, color, sex, sexual orientation, gender identity, national origin, age, ancestry or disability in the offering or furnishing of commercial space, or beneficial use of its facilities, goods, services or privileges thereof.

The provisions of this section shall not be construed by negative implication or otherwise to narrow or restrict any part or portion of section 62-136 or any other provisions of this chapter.

Sec. 62-137. Exemptions.

Nothing in this article shall be construed to apply to the following:

- (1) Any exempt qualifications imposed by a bona fide religious institution as specified in I.C. subsection 216.7(2)(a).
- (2) The rental or leasing to transient individuals of fewer than six rooms within a single housing accommodation by the occupant or owner of such housing accommodation if the occupant or owner or members of the occupant's or owner's family reside therein.
- (3) Restrictions based on sex on the rental or leasing of housing accommodations by nonprofit corporations.
- (4) Restrictions based on sex on the rental or leasing of housing accommodations which the owner can show were operated for the purpose of providing housing for persons of any one sex prior to January 21, 1972.

.....

Sec. 62-196 – 62-170. Reserved.

ARTICLE VII DISCRIMINATORY EDUCATION, CREDIT, OTHER PRACTICES

Sec. 62-172 Illegal credit practices.

(a) It shall be an illegal discriminatory practice for any:

- (1) Creditor to refuse to enter into a consumer credit transaction or impose finance charges or conditions more onerous than those regularly extended by that creditor to consumers of similar economic backgrounds because of age, color, creed, national origin, race, religion, marital status, sex, sexual orientation, gender identity, physical disability or familial status.
- (2) Persons authorized or licensed to do business in this state pursuant to I.C. chapters 524, 533, 536, or 536A to refuse to loan or extend credit or impose terms or conditions more onerous than those regularly extended to persons of similar

economic backgrounds because of age, color, creed, national origin, race, religion, marital status, sex, sexual orientation, gender identity, physical disability or familial status.

- (3) Creditor to refuse to offer credit life or health and accident insurance because of age, color, creed, national origin, race, religion, marital status, sex, sexual orientation, gender identity, physical disability or familial status. Refusal by a creditor to offer credit life or health and accident insurance based upon the age or physical disability of the consumer shall not be an unfair or discriminatory practice if such denial is based solely upon bona fide underwriting considerations not prohibited by I.C. title XIII, subtitle 1.
- (b) The provisions of this section shall not be construed by negative implication or otherwise to narrow or restrict any other provisions of this chapter.

Sec. 62-173 Dwelling tenancy discrimination.

- (a) It shall be an illegal discriminatory practice for an owner of a dwelling to deny a prospective tenant or to remove or evict a current tenant based on the tenant's five-year-old arrests or convictions for non-violent misdemeanor offenses under Iowa law, municipal or county ordinance or their equivalent categorization of offense if from another jurisdiction outside the state.
- (b) Nothing in this section shall be construed to apply to a participant in a federal, state or local government housing assistance program that requires denial of a prospective tenant, or the removal or eviction of a current tenant based on such prior arrests or convictions.

Section 62-174 – 62-190. Reserved.

ARTICLE VIII COMMUNITY MEDIATION

Sec. 62-191. Voluntary community mediation.

The commission, in its mission to establish mutual understanding and respect among persons within the city, may engage in mediation of matters, disagreements or disputes between persons which may have a real or perceived discriminatory impact or consequence and which may not constitute an illegal discriminatory practice under this chapter, or of any other dispute regarding human relations or rights. The commission shall promulgate rules and procedures for voluntary mediation in accordance with section 62-11, which rules and procedures shall include the following:

- (1) Mediation shall be initiated only after the commission has received a formal request for mediation services signed by all involved parties and the director. The director or one of its designees shall preside over the mediation and shall use conference, conciliation, and persuasion with the involved parties and any resolution shall be embodied in a conciliation agreement signed by all involved parties and the director.
- (2) If director or its designee is unable, after reasonable efforts, to resolve the matter, disagreement or dispute through mediation, the director or its designee shall declare an impasse, withdraw and not participate further. The director or its designee may advise

the involved parties of such appropriate or available remedies as may exist to further pursue the resolution of the matter, disagreement or complaint.

Section 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:

Judy K. Parks-Kruse, Assistant City Attorney

T.M. Franklin Cownie, Mayor

Attest: I, P. Kay Cmelik, City Clerk of the City of Des Moines, Iowa, hereby certify that the above and foregoing is a true copy of an Ordinance (Roll Call No. 21-1770), passed by the City Council of said City at the meeting held on November 15, 2021 and signed by the Mayor on November 15, 2021 and published and provided by law in the Business Record on December 3, 2021. Authorized by Publication Order No. 11732.

P. Kay Cmelik, City Clerk