

ORDINANCE _____

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, REPEALING THE EXISTING TITLE 6, CHAPTER 14 “FAIR HOUSING” AND REPLACING IT WITH A NEW MESA CITY CODE TITLE 6, CHAPTER 14 “NON-DISCRIMINATION CODE” PROHIBITING DISCRIMINATION IN PUBLIC ACCOMMODATION, EMPLOYMENT, AND HOUSING ON THE BASIS OF RACE, COLOR, ETHNICITY, NATIONAL ORIGIN, AGE, DISABILITY, RELIGION, SEX, SEXUAL ORIENTATION, GENDER, GENDER IDENTITY, VETERAN’S STATUS, MARITAL STATUS, AND FAMILIAL STATUS AND ESTABLISHING PENALTIES FOR VIOLATIONS THEREOF.

WHEREAS, the City of Mesa is comprised of diverse and varied groups, communities and individuals;

WHEREAS, the City of Mesa values its diversity and the City Council finds that all individuals living in, working in or visiting the City are entitled to be treated with equal dignity and respect;

WHEREAS, the City Council believes that discriminatory practices impede the social and economic progress of the City by preventing all people from contributing to and fully participating in the cultural, social and economic growth of the community, which is essential to the growth and vitality of the City's neighborhoods and businesses;

WHEREAS, the City of Mesa has a compelling interest in ensuring equal access to publicly available goods and services and housing for all individuals living in, working in or visiting the City;

WHEREAS, the City of Mesa has a compelling interest in ensuring workplaces within the City are free from discrimination and harassment on the basis of race, color, ethnicity, national origin, age, disability, religion, sex, sexual orientation, gender, gender identity, veteran's status, marital status, and familial status; and

WHEREAS, preventing discriminatory practices based on race, color, ethnicity, national origin, age, disability, religion, sex, sexual orientation, gender, gender identity, veteran's status, marital status, or familial status will benefit the citizens and community of the City of Mesa, and the City Council hereby finds that this ordinance is in furtherance of the compelling governmental interests of ensuring equal access to publicly available goods and services and housing, and ensuring that workplaces are free from discrimination and harassment in the City of Mesa.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

SECTION 1. Mesa City Code Title 6, Chapter 14, entitled "Fair Housing," is repealed in its entirety and is renamed the "Non-Discrimination Code" and is replaced with the following:

**CHAPTER 14
NON-DISCRIMINATION**

SECTION:

6-14-1	Definitions
6-14-2	Policy
6-14-3	Unlawful Practices
6-14-4	Exclusions
6-14-5	Enforcement Provisions
6-14-6	Civil Violation Citation
6-14-7	Civil Penalties
6-14-8	General Provisions

6-14-1: DEFINITIONS

The below words and phrases, wherever used in this Chapter 14, shall have the definition set forth in this Section unless, from the context, a different meaning is intended. Words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

Age means to discriminate against an individual because the individual is forty (40) years of age or older.

Bona fide private membership club means a private club not open to the public that is supported by membership fees, dues, and assessments, and qualifies for exemption by the Internal Revenue Service; and, that is not organized for the purpose of evading compliance with this article.

City contractor or city vendor means a person or firm in the business of selling or otherwise providing products, materials or services, that has gone through a competitive solicitation process with the City of Mesa, and been awarded a contract with the City of Mesa through a formal award by the City Council. This does not include a cooperative procurement conducted by, or on behalf of, more than one eligible public procurement unit.

Complainant means an individual claiming to be aggrieved by a violation of this Chapter and that files a complaint under this Chapter.

Dwelling means any building, structure, or portion thereof which is occupied, or designed or intended for occupancy, as a residence by one or more families and any vacant land which is offered for sale or lease for the construction or location thereon of any such residential building, structure, or portion thereof.

Disability means a physical or mental impairment, except any impairment caused by current use of illegal drugs, that substantially limits one or more major life activities of the individual, a record of such physical or mental impairment, or being regarded as having such physical or mental impairment.

Disability and disability discrimination shall be interpreted in a manner consistent with the Americans with Disabilities Act of 1990 (as amended), the Federal regulations promulgated thereunder, and judicial decisions construing them.

Discriminate and Discrimination means to make any distinction with respect to any individual or individuals based on the actual or perceived race, color, ethnicity, national origin, age, disability, religion, sex, sexual orientation, gender, gender identity, veteran's status, marital status, genetic information, or familial status of an individual except as required by federal or state law or court order.

Employee means an individual employed for pay to perform services for an employer covered by this Chapter and whose activities are controlled and directed by the employer for whom services are being performed and who is economically dependent upon the employer.

Employer means a person doing business within the City who has five or more employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year, and any agent of such person. This definition excludes a bona fide private membership club (other than a labor organization) that is exempt from taxation under the Internal Revenue Code of 1986 (as amended).

Familial status means the state of having one or more minor children under the age of eighteen (18) being domiciled with: a parent, guardian or another person having legal custody; the designee of such parent, guardian or another person having legal custody with written permission; or, a foster parent or other person with whom a minor child is placed by court order. This definition includes pregnant women and people securing custody of children under the age of eighteen (18) or that have a disability.

Gender identity means the actual or perceived gender-related identity, expression, appearance, or mannerisms, or other gender-related characteristics of an individual, regardless of the individual's designated sex at birth.

Marital status means the status of a person being unmarried, married, separated, widowed, or divorced.

National origin means the country or nation of origin of an individual or any of his/her forebears and characteristics generally identified with individuals so originating.

Place of public accommodation means facilities, establishments, accommodations, services, commodities or use offered to or enjoyed by the general public, but does not include any dwelling, any bona fide private club, or any place that is in its nature distinctly private. *Place of public accommodation* includes, but is not limited to:

1. Hotels, motels, trailer courts and boardinghouses, which shall include any establishments offering lodging to transient guests for compensation.
2. Restaurants, which shall include lunch counters, coffee shops, lunchrooms, luncheonettes, cafes, cafeterias, tearooms, snack bars or stands, mobile food service facilities, grills, sandwich shops, supper clubs, soft drink fountains, ice cream parlors or stands, and other

places which offer food, ice cream parlors or stands, and other places which offer food, ice cream or beverages for purchase and consumption on or off the premises.

3. Taverns, which shall include bars, barrooms, saloons, roadhouses and like establishments, wherein spiritous or malt liquors or wines are offered for sale or consumption on or off the premises.
4. Theaters, which shall include places, whether indoors or outdoors, at which any theatrical performance, moving picture show, musical concert or recital, dramatic reading or monologue, circus, carnival or other like entertainment or amusement is offered.
5. Retail establishments, which shall include retail stores, garages, automobile and gasoline service stations, and other like establishments serving the public.
6. Places of public amusement and recreation, which shall include bowling alleys, billiard halls and poolrooms, dance halls, race courses, shooting galleries, sports arenas or fields, gymnasiums, exhibitions, skating rinks and other like establishments.
7. Educational facilities, which shall include a private academy, college, university, elementary or secondary school, kindergarten, extension course, nursery school system, and a business, nursing, professional, secretarial, technical or vocational school located or operating in the City. An educational facility shall not include any religious educational institution, as set forth in Section 6-14-4(A) of this Chapter, any public school or any charter school.
8. Public conveyances, which shall include all transportation facilities operated on land, air or water as well as the stations and terminals thereof.
9. Funeral parlors and places of burial, including any cemetery, mausoleum, crypt, or any establishment for the embalming, processing or interment of corpses.

Respondent means the person alleged by the Complainant to have violated a provision of this Chapter.

Sex means male or female and shall be interpreted broadly to include all distinctions based on pregnancy, childbirth or related medical conditions.

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

Veteran's status has the same meaning as set forth under federal law at 38 U.S.C. § 101(2).

6-14-2: POLICY

It is declared to be the policy for the citizens of Mesa, Arizona, to be free from discrimination in public accommodations, employment, and housing, and contrary to public policy and unlawful to discriminate against any person on the basis of race, color, ethnicity, national origin, age, disability, religion, sex, sexual orientation, gender, gender identity, veteran's status, marital status, or familial status in places of public accommodation, employment, and housing; and contrary to the policy of the

City and unlawful for vendors and contractors doing business with the City to discriminate, as set forth in this Chapter.

6-14-3: UNLAWFUL PRACTICES

The following, within the City of Mesa, shall constitute a violation of this Chapter:

(A) Public Accommodation. For any owner, operator, lessor, manager, agent or employee of any place of public accommodation to discriminate against any person, including to restrict or refuse access or service on the basis of race, color, ethnicity, national origin, age, disability, religion, sex, sexual orientation, gender, gender identity, veteran's status, marital status, or familial status.

(B) Employment. For an employer, because of race, color, ethnicity, national origin, age, disability, religion, sex, sexual orientation, gender, gender identity, veteran's status, marital status, or familial status to refuse to hire or employ or bar or discharge from employment any person, or to discriminate against such person in compensation, conditions, or privileges of employment.

(C) Housing. For any owner or lessor to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities therewith, or to refuse to negotiate for the sale or rental because of race, color, ethnicity, national origin, age, disability, religion, sex, sexual orientation, gender, gender identity, veteran's status, marital status, or familial status.

(1) This Subsection shall not exclude or deny housing designated for senior living or for individuals with disabilities, or as otherwise designated or directed by the United States Department of Housing and Urban Development or the State of Arizona.

(2) This Subsection shall not apply to the rental of rooms within a single residential dwelling or single residential lot (such as accessory dwelling units or duplexes) if the owner or lessor resides therein or thereon.

(D) Labor Organizations. For a labor organization, because of race, color, ethnicity, national origin, age, disability, religion, sex, sexual orientation, gender, gender identity, veteran's status, marital status, or familial status, to exclude, expel, limit or restrict from its membership any person, or to provide segregated membership or otherwise discriminate in any manner against any of its members, applicants or employers.

(E) City Contracts. For a city contractor or city vendor, or a grantee, because of race, color, ethnicity, national origin, age, disability, religion, sex, sexual orientation, gender, gender identity, veteran's status, marital status, or familial status, to refuse to hire or employ or bar or discharge from employment any person, or to discriminate against such person in compensation, conditions, or privileges of employment.

6-14-4: EXCLUSIONS

(A) This Chapter shall not apply to:

(1) A place of public accommodation to afford beneficial pricing or policies to senior citizens, veterans, students or individuals with disabilities.

(2) A place of public accommodation operating solely as a single-sex fitness center or gymnasium as long as the fitness center or gymnasium does not include any other place of public accommodation as defined in this Chapter and does not discriminate against any other protected group identified in Section 6-14-2.

(3) A place of public accommodation that includes single-sex designated areas within the place of public accommodations, as long as the place of public accommodation does not discriminate against any other protected group identified in Section 6-14-2.

(4) A religious corporation, association or society; or a school, college or university or other educational institution or institution of learning if the institution is in whole or substantial part controlled, managed, owned, or supported by a religious corporation, association or society; or the curriculum of the institution is directed toward the propagation of religion, except this Chapter shall apply to the employment or an employment opportunity with a religious organization, wherein the duties of the position pertain solely to activities of the organization that generate unrelated business taxable income subject to taxation under Section 511(a) of the Internal Revenue Code of 1986.

(5) An expressive association whose membership of a person protected by this Chapter would significantly burden the association's rights of expressive association under the First Amendment, federal or state statutes, as interpreted in binding judicial decisions, that would preempt or preclude enforcement of this Chapter.

(6) Speech and expressive activities and the free exercise of religion protected under the First Amendment and other applicable federal and state statutes, as interpreted in binding judicial decisions, that would preempt or preclude enforcement of this Chapter.

(7) An employer who observes the conditions of a bona fide affirmative action plan authorized pursuant to federal or state law or a bona fide seniority system that is not a pretext to evade the purposes of this Chapter.

(8) The right of a place of public accommodation to remove or cause to be removed from such place any person under the influence of alcohol or other drugs, or who is engaged in boisterous conduct or conduct that would constitute criminal activity under any state or federal criminal law, or who violates any regulation of any place of public accommodation that applies to all persons, regardless of race, color, ethnicity, national origin, age, disability, religion, sex, sexual orientation, gender, gender identity, veteran's status, marital status or familial status.

(9) The United States government, any of its departments or agencies, or any corporation wholly owned by it; an Indian tribe; the state of Arizona or any of its departments, agencies, or political subdivisions; and any community college district or high school or elementary school district or public school, including charter schools, but excluding the City of Mesa.

6-14-5: ENFORCEMENT PROVISIONS

(A) Administrative Responsibilities

(1) The City Manager has the authority and responsibility for administering this Chapter. The City Manager may delegate any of the City Manager's authority or responsibilities to designees who shall have the same authority as the City Manager, as set forth in this Chapter.

(2) The City Manager shall be responsible for the investigation, mediation, and conciliation of complaints filed pursuant to this Chapter.

(3) The City Manager shall have the authority to issue citations for violations of this Chapter pursuant to this Chapter. For a first violation under Section 6-14-7(A)(1), the City Manager shall seek resolution through mediation or alternative means before issuing a citation. For second, third or subsequent violations, the City Manager may seek resolution through mediation or alternative means before issuing a citation.

(4) Upon issuance of a citation, the City Manager is authorized to take such actions as appropriate to carry out the enforcement of this Chapter.

(5) Nothing in this Chapter shall preclude the City Manager from seeking voluntary compliance with the provisions of this Chapter, or from enforcing this Chapter through notices or warnings of violations or through other informal means designed to achieve compliance in the most efficient and effective manner under the circumstances.

(B) Civil Violation Procedures

(1) Within ninety (90) days of an alleged violation of this Chapter, a Complainant must file with the City Clerk a written verified complaint signed by the Complainant. The complaint shall set forth facts upon which it is based and shall identify the person alleged to have violated this Chapter.

(2) To avoid multiple legal actions, if the Complainant has filed a complaint with a federal or state agency or court alleging the same facts, the City of Mesa complaint will be dismissed to allow the federal or state agency or court to address the allegations.

(3) If the complaint states a claim that would be a violation of existing state or federal law or is within the jurisdiction of a federal or state agency, the City Manager shall refer the Complainant to the appropriate agency or tribunal and dismiss the complaint.

(4) The City Manager will dismiss the complaint if it was untimely filed or if the location of the alleged violation of this Chapter did not occur within the City of Mesa. The City Manager may dismiss the complaint on procedural or substantive grounds including, but not limited to, there is insufficient evidence to establish reasonable cause that a violation of this Chapter occurred.

(5) If the complaint is not dismissed, the City Manager shall furnish the Respondent with a copy of the complaint. The Respondent may file, no later than thirty (30) days following receipt of the complaint, a written verified answer. The City Manager may grant an extension, upon a good faith request of the Respondent. If the Respondent fails to timely answer the complaint, the allegations in the complaint shall be deemed admitted, such person shall be deemed responsible for having committed the offenses described in the complaint, and a civil penalty shall be imposed pursuant to this Chapter.

(6) At any time prior to a finding of responsible, whether by admission, default, or after a hearing, the City Manager may seek resolution through mediation. A resolution resulting from mediation shall not automatically be considered an admission.

(7) If the complaint is not dismissed and mediation attempts are unsuccessful, the City Manager shall investigate the allegations of the discriminatory practices set forth in the complaint to determine if there is sufficient evidence to establish reasonable cause that there was a violation of this Chapter. If the City Manager determines that there is sufficient evidence to establish reasonable cause that the Respondent violated this Chapter, the City Manager shall issue a citation pursuant to Section 6-14-6 of this Chapter.

6-14-6: CIVIL VIOLATION CITATION

(A) The citation will be substantially in the form established by the City Manager. It shall advise the Respondent of the violations committed, either by written description of the violations or by designation of the City Code Section that was violated. The Civil Hearing Officer may permit amendments to the citation if substantial rights of the Respondent are not thereby prejudiced. The citation shall direct the Respondent to pay the civil sanction and all applicable fees as specified in Section 6-14-7 within the time period specified on the citation. The citation shall be served by personal service, or pursuant to A.R.S. § 9-500.21.

(B) The Respondent shall, within the time period specified on the citation, either pay the civil sanction and the fees, or appear in person or through an attorney before the Civil Hearing Officer and admit or deny the allegations contained in the citation. If the Respondent timely pays the fine and fees, either in person or by mailing payment to the City, the allegations in the citation shall be deemed admitted and such person shall be deemed responsible for having committed the offenses described in the citation. If the Respondent appears and admits the allegations, the Civil Hearing Officer shall enter judgment against the Respondent and enter an appropriate sanction. If the Respondent appears and denies the allegations contained in the citation, the Civil Hearing Officer shall set the matter for hearing.

(C) If the person served with a citation fails to pay the fine or fails to appear on or before the time directed to appear or at the time set for hearing by the Civil Hearing Officer, the allegations in the complaint shall be deemed admitted and the Civil Hearing Officer shall enter a finding of responsible and impose the applicable sanction as specified in Section 6-14-7.

(D) All proceedings before the Civil Hearing Officer shall be informal and without a jury, except that testimony shall be given under oath or affirmation. The technical rules of evidence do not apply, except for statutory provisions relating to privileged communications. If the allegations in the citation are denied, the City is required to prove violations of this Chapter by a preponderance of the evidence. Pre-hearing discovery shall be permitted as determined by the Civil Hearing Officer. The Civil Hearing Officer is authorized to make such orders as may be necessary or appropriate to fairly and efficiently determine the truth and decide the case at hand including, but not limited to, issuing subpoenas.

(E) An appeal from final judgments of the Civil Hearing Officer may be taken pursuant to the Arizona Rules of Procedure for Special Actions. Appeals must include the basis for the appeal and be filed within 20 days of the final judgement.

(F) Any judgment for civil fines or penalties pursuant to this Chapter may be collected as any other civil judgment.

6-14-7: CIVIL PENALTIES

(A) Any person who is found responsible for a violation of this Chapter, whether by admission, default, or after a hearing shall be issued a civil sanction as follows:

(1) First Violation. A person found responsible for a first violation of this Chapter shall be fined a penalty of \$300 per civil offense.

(2) Second Violation. A person found responsible for a violation of this Chapter within twelve (12) months of being held responsible for a prior violation of this Chapter shall be fined not less than \$300 nor more than \$2,500 per civil offense.

(3) Third Violation. A person found responsible for a violation of this Chapter within twenty-four (24) months of being held responsible for two prior violations of this Chapter, shall be fined not less than \$600 nor more than \$2,500 per civil offense.

6-14-8: GENERAL PROVISIONS

(A) This Chapter does not create a private cause of action.

(B) It shall be a violation of this Chapter for a person who with the intent to promote or facilitate the commission of an offense under this Chapter: (i) solicits or commands another person to commit the offense; or (ii) aids, counsels, agrees to aid or attempts to aid another person in planning or committing an offense. A violation under this Section shall be subject to the same enforcement provisions and civil sanctions as all other violations under this Chapter.

SECTION 2. RECITALS. The recitals above are fully incorporated in this Ordinance by reference.

SECTION 3. EFFECTIVE DATE. The effective date of this Ordinance shall be one-hundred twenty (120) days following adoption by the Mesa City Council.

SECTION 4. INTENT, INTERPRETATION AND APPLICATION. Nothing in this Chapter is intended to alter or abridge other rights, protections, or privileges secured under any state or federal law. This Chapter shall be construed, applied, and enforced in a manner consistent with the Arizona Constitution, Article 2, Section 6, the Free Exercise of Religion Act (FERA) (A.R.S. § 41-1493.01), and First Amendment jurisprudence relating to freedom of speech, expression, and the exercise of religion. Because federal law substantially regulates employment-based health benefits, this ordinance does not regulate, and shall not apply to, employee-based health benefits. This Chapter is not intended to, and shall not, prevent or preclude single-sex sports or recreational leagues or programs, as long as such sports, leagues or programs do not discriminate against any other protected group identified in Section 6-14-2.

SECTION 5. PRESERVATION OF RIGHTS AND DUTIES. 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.

SECTION 6. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance or any part of the material adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, this 1st day of March, 2021.

APPROVED:

Mayor

ATTEST:

City Clerk