

Agenda Item No. _____
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City of Madison, Wisconsin

AN ORDINANCE _____
amending Section 3.23(2) of the Madison General Ordinances to clarify that the definition of sexual orientation includes gender identity, and to establish a definition of gender identity.

Presented August 1, 2000
Referred EOC

Rereferred _____

Reported Back _____

Drafted by: Eunice Gibson
City Attorney

Adopted _____ POF _____

Rules Susp. _____ Tabled _____

Public Hrg. _____

Date: July 25, 2000

* * * *

Fiscal Note: No fiscal impact

Mayor Signed _____

Published _____

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SPONSOR(S): Alds. Verveer, Poulson,
Sentmanat

APPROVAL OF FISCAL NOTE BY THE
COMPTROLLER'S OFFICE IS NEEDED

Approved by:

Comptroller's Office

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ORDINANCE NO. _____

ID NO. 28023

Subsection (1) entitled "Definitions" of Section 3.23 entitled "Equal Opportunities Ordinance" is amended to read as follows:

“(2) Definitions.

- (a) Age. The prohibition against discrimination because of age shall not apply to any person less than eighteen (18) years of age.
- (b) Application for credit means any communication, oral or written, by a person to a creditor requesting an extension of credit to that person or to any other person, and includes any procedure involving the renewal or alteration of credit privileges or the changing of the name of the person to whom credit is extended.
- (c) Arrest record includes, but is not limited to, information indicating that a person has been questioned, apprehended, taken into custody or detention, held for investigation, arrested, charged with, indicted or tried for any felony, misdemeanor or other offense pursuant to any law enforcement or military authority.
- (d) City facilities includes all property owned and services rendered by the City for the welfare of its inhabitants.

- (e) Commercial facilities means facilities that are intended for nonresidential use and whose operation will affect commerce use. The term “commercial facilities” does not include buildings or parts of buildings not open to and not reasonably expected to be open to the public, railroad locomotives, railroad freight cars, railroad cabooses, railroad cars described in 42 U.S.C. 12162 and covered under 42 U.S.C. 12181 et seq, railroad rights-of-way, or facilities that are covered or expressly exempted from coverage under Sec. 3.23(4) of the Madison General Ordinances, and types of facilities that are specifically exempted under Sec. 101.13(2) of the Wisconsin Statutes.
- (f) Conviction record includes, but is not limited to, information indicating that a person has been convicted of a felony, misdemeanor or other offense, placed on probation, fined, imprisoned or paroled pursuant to any law enforcement or military authority. In addition, “conviction record” as used in Sec. 3.23(4)(d), relating to discrimination in housing, shall also include information indicating that a person has been convicted of a civil ordinance violation (forfeiture).
- (g) Covered multifamily dwellings means
1. Buildings consisting of three (3) or more units if such buildings have one or more elevators; and
 2. Ground floor portions of units in other buildings consisting of three (3) or more units.
- (h) Credit means the right granted by a creditor to a person to defer payment or debt or to incur debt and defer its payment, or purchase property or services and defer payment therefor, including but not limited to the right to incur and defer debt which is secured by residential real property.
- (i) Credit sale means any transaction with respect to which credit is granted.
- (j) Credit transaction means any invitation to apply for credit, application for credit, extension of credit or credit sale.
- (k) Creditor means any person who regularly extends or arranges for the extension of credit for which the payment of a finance charge or interest is required whether in connection with loans, sale of property or services or otherwise.
- (l) Dependent means one who lives with a domestic partnership and is:
1. A biological child of a domestic partner; or
 2. A dependent as defined under IRS regulations; or
 3. A ward of a domestic partner as determined in a guardianship proceeding; or
 4. A person adopted by a domestic partner.
- (m) Disability means, with respect to a person,
1. A physical or mental impairment which substantially limits one or more of such person's major life activities; or
 2. A record of having such an impairment; or
 3. Being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802)).
 4. The term also includes the term “handicap” as used in local, state and federal statutory, administrative or judicial case law.
- (n) Domestic partner means those adults in a domestic partnership.

- (o) Domestic partnership means two adults and their dependents, if any, which satisfy the following requirements:
1. They are in a relationship of mutual support, caring and commitment and intend to remain in such a relationship in the immediate future; and
 2. They are not married (unless they are married to each other) or legally separated and, if either party has been a party to an action or proceeding for divorce or annulment, at least six (6) months have elapsed since the date of the judgment terminating the marriage; and
 3. Neither domestic partner is currently registered in a domestic partnership with a different domestic partner and, if either partner has previously been registered as a domestic partner in a domestic partnership, at least six (6) months have elapsed since the effective date of termination of that registration; and
 4. Both are 18 years of age or older; and
 5. Both are competent to contract; and
 6. They are occupying the same dwelling unit as a single, nonprofit housekeeping unit, whose relationship is of permanent and distinct domestic character; and
 7. They are not in a relationship that is merely temporary, social, political, commercial or economic in nature.
- (p) Employees does not include any individual employed by her/his parents, spouse, or child.
- (q) Extension of credit means all acts incident to the evaluation of an application for credit and the granting of credit.
- (r) Facility means all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.
- (s) 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 sole or joint legal custody or physical placement, as defined in Sec. 767.001, Wis. Stats., of such individual or individuals; or
 2. The designee of such parent or other person having such custody or physical placement, with the written permission of such parent or other person; or
 3. A foster parent or other person with whom a person under the age of 18 years is placed by court order.
- 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 sole or joint legal custody or physical placement of any individual who has not attained the age of 18 years.
- (t) Gender identity is the actual or perceived condition, status or acts of 1) identifying emotionally or psychologically with the sex other than one's biological or legal sex at birth, whether or not there has been a physical change of the organs of sex; 2) presenting and/or holding oneself out to the public as a member of the biological sex that was not one's biological or legal sex at birth; 3) lawfully displaying physical characteristics and/or behavioral characteristics and/or expressions which are widely perceived as being more appropriate to the biological or legal sex that was not one's

biological or legal sex at birth, as when a male is perceived as feminine or a female is perceived as masculine; and/or 4) being physically and/or behaviorally androgynous.

- (t)(u) Housing means any building, structure, or part thereof which is used or occupied, or is intended, arranged or designed to be used or occupied, as a residence, home or place of habitation of one or more human beings, including a mobile home as defined in Section 66.058 of the Wisconsin Statutes and a trailer as defined in Section 9.23 of the Madison General Ordinances and any land for sale, lease or use as a site for a building, structure or part thereof intended or designed to be used or occupied as a residence, home or place of habitation of one or more human beings, including a mobile home park as defined in Section 66.058 of the Wisconsin Statutes and a trailer camp as defined in Section 9.23 of the Madison General Ordinances. Such definition of "housing" is qualified by the exceptions contained in Section 3.23(4)(a).
- (tt)(v) Invitation to apply for credit means any communication, oral or written, by a creditor which encourages or prompts an application for credit.
- (tv)(w) Labor organization includes any collective bargaining unit composed of employees.
- (tw)(x) Less than honorable discharge means any general, undesirable, clemency, bad conduct or dishonorable discharge from the military service.
- (tx)(y) Marital status includes being married, separated, divorced, widowed, or single.
- (ty)(z) Mutual support means that the domestic partners contribute mutually to the maintenance and support of the domestic partnership throughout its existence.
- (tz)(aa) Person means one or more individuals, labor unions, partnerships, associations, corporations, cooperatives, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers or other fiduciaries, and shall include the City of Madison, and the agent or agents of any of the foregoing.
- (aa)(bb) Physical appearance means the outward appearance of any person, irrespective of sex, with regard to hair style, beards, manner of dress, weight, height, facial features, or other aspects of appearance. It shall not relate, however, to the requirement of cleanliness, uniforms, or prescribed attire, if and when such requirement is uniformly applied for admittance to a public accommodation or to employees in a business establishment for a reasonable business purpose.
- (bb)(cc) Political beliefs means one's opinion, manifested in speech or association, concerning the social, economic and governmental structure of society and its institutions. This ordinance shall cover all political beliefs, the consideration of which is not preempted by state or federal law.
- (ee)(dd) Public place of accommodation or amusement includes those accommodations, facilities and services which a person holds out to be open to the common and general use, participation and enjoyment of the public for any purpose. The term "public place of accommodation or amusement" shall be interpreted broadly to include, but not be limited to, places of business or recreation, hotels, motels, resorts, restaurants, taverns, barber or cosmetologist, aesthetician, electrologist or manicuring establishments, nursing homes, clinics, hospitals, cemeteries, and any place where accommodations, amusements, goods or services are available either free or for a consideration, except where such a broad interpretation would deny to any person rights guaranteed by the constitutions of Wisconsin and of the United States.

Public place of accommodation or amusement does not include a place where a bona fide private, nonprofit organization or institution provides accommodations, amusement, goods or services during an event at which the organization or institution provides the accommodations, amusement, goods or services to the following individuals only:

1. Members of the organization or institution.
2. Guests named by members of the organization or institution.
3. Guests named by the organization or institution.

~~(dd)~~(ee) Readily achievable means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include:

1. The nature and cost of the action needed under this Ordinance;
2. The overall financial resources of the facility or facilities involved in the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;
3. The overall financial resources of the person who owns or operates the facility; the overall size of the business with respect to the number of its employees; the number, type and location of its facilities; and
4. The type of operation or operations of the person who owns or operates the facility, including the composition, structure, and functions of the workforce of such person; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question.

~~(ee)~~(ff) Religion includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates inability to reasonably accommodate an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

~~(ff)~~(gg) "Sexual harassment" means unwelcome sexual advances; unwelcome requests for sexual favors; unwelcome physical contact of a sexual nature; or unwelcome verbal or physical conduct of a sexual nature which shall include, but not be limited to, deliberate or repeated unsolicited gestures, verbal or written comments, or display of sexually graphic materials which is not necessary for business purposes. "Sexual harassment" includes conduct directed by a person at another person of the same or opposite gender.

~~(gg)~~(hh) Sexual orientation includes homosexuality, heterosexuality, ~~and~~ bisexuality and gender identity by preference or practice.

~~(hh)~~(ii) Source of income includes, but shall not be limited to, moneys received from public assistance, pension, and Supplementary Security Income (SSI). Source of income shall be limited to legally derived income.

~~(ii)~~(jj) Student means a person who is enrolled in a public or private high school, college, university, technical college, accredited trade school, or apprenticeship program.

~~(jj)~~(kk) Transfer does not apply to the transfer of property by will or gift."