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# SALT LAKE CITY COUNCIL STAFF REPORT

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**DATE:** October 20, 2009

**SUBJECT:** Proposed Non-discrimination Ordinances:

- Employment practices based on sexual orientation and gender identity
- Housing practices based on sexual orientation and gender identity

**STAFF REPORT BY:** Karen Halladay, Budget and Public Policy Analyst

**AFFECTED COUNCIL DISTRICTS:** All

**ADMINISTRATIVE CONTACTS:** David Everitt, Chief of Staff  
Ed Rutan, City Attorney  
Yolanda Francisco-Nez, Office of Diversity and Human Rights

**NOTICE REQUIREMENTS:** None required

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## Recommendation from Administration

After nearly two years of public comment and research conducted by the Salt Lake City Human Rights Commission (HRC), the Mayor's Office of Diversity and Human Rights (ODHR), and Salt Lake City staff, the Administration is recommending two new ordinances to the Salt Lake City Code. The ordinances are:

- Chapter 10.04 – Unlawful discrimination in employment practices based on sexual orientation or gender identity.
- Chapter 10.05 – Unlawful discrimination in housing practices based on sexual orientation or gender identity.

The two ordinances, as proposed by the Administration, share research, public process, and legal issues. However, each ordinance will require a Council action. For purposes of this staff report, the information, when similar, will be combined and will refer to both ordinances being considered by the Council. Ordinance differences, including research, process, and legal issues, will be indicated by Council Staff.

**Key Elements** – This section of the staff report includes: 1) Elements of the Ordinance, 2) Salt Lake City Government – Diversity Initiatives, 3) Demographics, Statistics, and Research Findings, 4) Public Process, and 5) Matters at Issue and Policy Considerations. In addition, Attachment A – Current Law, provides an overview of federal, state and Salt Lake City antidiscrimination employment and housing laws.

### **1. Ordinance Elements** – Both ordinances acknowledge that:

- Salt Lake City is a diverse community
- Diversity is valued
- Discriminatory practices impede the social and economic progress of the City by preventing all people from contributing to or fully participating in the cultural, spiritual, social and commercial life of the community
- The HRC was created by the City Council to advise and recommend best ways to improve human relations, eliminate discrimination, and secure full and equal participation based on research and data
- The HRC recommends ordinances prohibiting discrimination in employment and housing practices on the basis of race, ethnicity, national origin, religion, age, gender, sexual orientation and gender identity and expression. Current state law protected classes regarding employment and housing are included below:
  - Proposed Chapter 10.04 – Employment – Utah Antidiscrimination Act, Utah Code Section 34A-5-101 addresses employment-related discrimination based on race; color; religion; sex; pregnancy, childbirth, or pregnancy-related conditions; national origin; age (if over 40 years old); and disability. Sexual orientation and gender identity are not addressed in the Utah Antidiscrimination Act.

- Proposed Chapter 10.05 – Housing – Utah Fair Housing, Utah Code Section 57-21-1 addresses housing-related discrimination based on race; color; religion; sex; national origin; familial status; source of income or disability. Sexual orientation and gender identity have not been addressed in the Utah Fair Housing Act.
- Per the proposed ordinance, “The Council has previously concluded that discrimination based on sexual orientation and gender identity are among the forms of discrimination that adversely affect the general welfare of the City and vitality of its neighborhoods.”
- Utah Code Annotated Section 10-8-84 (1) grants Salt Lake City the power to “provide for the safety” of and to “promote the prosperity...and comfort and convenience” of “the city and its inhabitants”
- The following chart presents elements specific to each of the proposed ordinances that will be considered by the Council:

	<b>Chapter 10.04 - Employment</b>	<b>Chapter 10.05 - Housing</b>
<b>Effective Date</b>	April 1, 2010	April 1, 2010
<b>Purpose</b>	<p>“Every individual in the City has the right to work and earn wages through gainful employment.”</p> <p>“The purpose of the Chapter is to provide a clear and comprehensive mandate for the prevention and elimination of discrimination in employment in the City against individuals based upon sexual orientation or gender identity and this chapter shall be liberally construed to achieve that purpose.”</p>	<p>“Every individual in the City has the right to seek housing.”</p> <p>“The purpose of the Chapter is to provide a clear and comprehensive mandate for the prevention and elimination of discrimination in housing in the City against individuals based upon sexual orientation or gender identity and this chapter shall be liberally construed to achieve that purpose.”</p>
<b>Administration</b>	<p>Mayor</p> <p>Mayor appoints Administrator to receive, investigate, and conciliate complaints under this chapter and includes Administrator’s designated representatives.</p>	<p>Mayor</p> <p>Mayor appoints Administrator to receive, investigate, and conciliate complaints under this chapter and includes Administrator’s designated representatives.</p>
<b>No Private Right of Action; No Special Rights</b>	<p>“This chapter does not create any special rights or privileges which would not be available to all of the City’s citizens because every person has a sexual orientation and a gender identity.”</p>	<p>“This chapter does not create any special rights or privileges which would not be available to all of the City’s citizens because every person has a sexual orientation and a gender identity.”</p>
<b>Definition of Discrimination in Proposed Ordinance</b>	<p>“Discrimination means any direct or indirect exclusion, distinction, segregation, limitation, refusal, denial, or other differentiation in the treatment of a person because of a person’s actual or perceived sexual orientation or gender identity or because of a person’s association with any such person. Discrimination shall not be interpreted to require or to grant or accord preferential treatment to any person because of that person’s sexual orientation or gender identity.”</p>	<p>“Discrimination means any direct or indirect exclusion, distinction, segregation, limitation, refusal, denial, or other differentiation in the treatment of a person because of a person’s actual or perceived sexual orientation or gender identity or because of a person’s association with any such person. Discrimination shall not be interpreted to require or to grant or accord preferential treatment to any person because of that person’s sexual orientation or gender identity.”</p>
<b>Exemptions</b>	<ul style="list-style-type: none"> <li>•Religious organizations</li> <li>•Expressive associations</li> <li>•US Government or any of its departments or agencies, or any corporation wholly owned by it</li> <li>•State of Utah or any of its departments, agencies, or political subdivisions, except for Salt Lake City</li> <li>•Salt Lake City employers (by ordinance definition) with less than 15 employees</li> </ul>	<ul style="list-style-type: none"> <li>•Temporary or permanent residence facility operated by a nonprofit or charitable organization, including any dormitory operated by a public or private educational institution</li> <li>•Religious organizations – for non-commercial purposes</li> <li>•US Government or any of its departments or agencies, or any corporation wholly owned by it</li> <li>•State of Utah or any of its departments, agencies, or political subdivisions, except for Salt Lake City</li> <li>•The sale or rental of a single-family dwelling, if the owner: <ul style="list-style-type: none"> <li>1. Does not own an interest in or title to four or more single-family dwellings held for lease or sale at one time, and are located inside the City.</li> <li>2. Has not sold two or more single-family dwellings inside the City, and in which the owner did not reside in the dwelling within the 24-month period preceding the</li> </ul> </li> </ul>

		<p>sale or rental of the dwelling.</p> <p>3. Does not use the service or facilities of any real estate broker, agent, or salesperson, or of any person in the business of selling or renting dwellings.</p> <ul style="list-style-type: none"> <li>•The rental of a dwelling that is occupied or intended to be occupied by no more than four families living independently of each other, when the owner actually maintains and occupies part of the dwelling as a residence.</li> <li>•“This chapter does not prohibit distinctions based on a person’s inability or failure to fulfill the terms and conditions, including financial obligations of a lease, rental agreement, contract of purchase or sale, mortgage, trust deed or other financing agreement.”</li> <li>•“Nothing in this section prohibits conduct against a person because of the person’s conviction by a court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance under state or federal law.”</li> </ul>
<p><b>Violations</b></p>	<p><b>Unlawful Employment Practices:</b></p> <ul style="list-style-type: none"> <li>• <u>Employers</u> may not refuse to hire, promote, discharge, demote, or terminate any person, and may not retaliate against, harass, or discriminate in matters of compensation or in terms, privileges, and conditions of employment against any person qualified.</li> <li>• <u>Employment Agencies</u> may not refuse to list and properly classify for employment, or refuse to refer a person for employment for a known available job for which the person is otherwise qualified.</li> <li>• <u>Labor Organizations</u> may not exclude any person otherwise qualified from full membership rights in the labor organization, expel the person from membership in the labor organization, or otherwise discriminate against or harass any of the labor organization’s members in full employment of work opportunity, or representation.</li> <li>• <u>Training Programs</u>, including employers, labor organizations, joint apprenticeship committee, vocational school, that provide coordinate or control apprenticeship, on-the-job training, or other training/retraining programs may not deny to, or withhold from, any qualified person, the right to be admitted to, or participate in any of the above mentioned programs.</li> <li>• <u>Notices and advertisements</u>, unless based on bona fide occupational qualifications, or required by and given to an agency of government for security reasons may not print or circulate any statement, advertisement, publication, application and/or membership form, or inquire in connection with prospective employment or membership that directly or indirectly expresses any limitation, specification or discrimination. <b>Note: Notices and advertisements, with specific preferences, are not prohibited if sexual orientation or gender identity are bona fide occupational qualifications for employment.</b></li> <li>• <u>No Preferential Treatment</u> should be given to an employment candidate because of an established or defined quota.</li> </ul>	<p><b>Unlawful Housing Practices:</b></p> <ul style="list-style-type: none"> <li>• Refusal to sell or rent after the making of a bona fide offer, negotiate for the sale or rental, or otherwise make unavailable any dwelling because of a person’s sexual orientation or gender identity.</li> <li>• Discriminate in terms, conditions, or privileges of the sale or rental of any dwelling or in providing facilities or services in connection with the dwelling.</li> <li>• Represent that a dwelling is not available for inspection, sale or rental when in fact said dwelling is available.</li> <li>• Make, print, circulate, publish, post or orally state either directly or indirectly preference, limitation, or discrimination based on sexual orientation or gender identity.</li> <li>• Induce or attempt to induce any person to buy, sell, or rent any dwelling by making representations about the entry or prospective entry into the neighborhood of persons of a particular sexual orientation or gender identity.</li> <li>• Engage in discriminatory housing practices based upon a person’s association with another person.</li> <li>• Real estate brokers or salespersons are precluded from discriminatory practices to: <ul style="list-style-type: none"> <li>1. Make available residential real estate or in defining the terms and conditions of the transaction in the City.</li> <li>2. Deny any person access to, or membership or participation in, any multiple-listing service, real estate broker’s organization, or other service, organization or facility relating to the business of selling or renting dwellings inside the City. In addition, it is unlawful to discriminate in the terms and conditions of access, membership, or participation in the organization, service, or facility inside the City.</li> <li>3. Engage in any discriminatory housing practice inside the City based upon a person’s association with another person.</li> </ul> </li> </ul>
<p><b>Unlawful</b></p>	<p>It is unlawful for any person to discriminate against,</p>	<p>It is unlawful for any person to discriminate against,</p>

<p><b>Intimidation, Retaliation, and Coercion</b></p>	<p>harass, threaten, harm, damage, or otherwise penalize another person for opposing an unlawful practice. This includes filing a complaint, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing under this chapter.</p>	<p>harass, threaten, harm, damage, or otherwise penalize another person for opposing an unlawful practice. This includes filing a complaint, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing under this chapter.</p>
<p><b>Procedures for Filing Complaints</b></p>	<p><b><u>File Complaint Process:</u></b></p> <ol style="list-style-type: none"> <li>1. Person claiming to have been injured may file a written complaint with the Administrator. <b>Note:</b> The Administrator may also file a complaint if there is reasonable cause to believe that a person has committed a violation of the ordinance.</li> <li>2. Administrator will provide written notification and a copy of the complaint to the alleged violator (Respondent) of the complaint, and advise on the procedural rights and obligations, including the right to file a written, signed, and verified informal answer to the complaint within 15 days of being served notice of the complaint.</li> <li>3. The Respondent may file a written answer to the complaint within 15 days of being noticed.</li> </ol> <p><b><u>Investigative Process:</u></b></p> <ul style="list-style-type: none"> <li>• Administrator investigates the complaint to determine facts and whether or not there is reasonable cause to believe the Respondent violated City ordinance. If complaint not founded or is not within the scope of the ordinance, the Administrator shall dismiss the complaint and notify the Complainant and Respondent.</li> <li>• The Administrator may seek the voluntary cooperation of any person involved in the investigation or may request the City Recorder to issue an executive branch subpoena or subpoena duces tecum to compel the attendance of a witness or the production of relevant materials or documents pursuant to Chapter 2.59 of the City Code.</li> </ul> <p><b><u>Conciliation Process:</u></b></p> <ul style="list-style-type: none"> <li>• It is the intent of the ordinance to resolve complaints by working through a conciliation process rather than by a punitive process.</li> <li>• The Administrator may attempt to conciliate the complaint by trying to achieve a just resolution and obtain assurances that the Respondent will satisfactorily remedy any violation of the Complainant’s rights, and take action to ensure the elimination of both present and future unlawful activity. A conciliation agreement may include sensitivity training for Respondent and employees, adoption of a non-discrimination policy by the Respondent, and/or a commitment to not engage in discriminatory practices.</li> <li>• A conciliation agreement must be in writing in a form approved by the City Attorney. The written form must be signed by both the Respondent and Complainant. In addition, the Administrator signature indicates approval of the agreement.</li> <li>• If Respondent voluntarily enters into a conciliatory agreement, the Administrator should immediately dismiss the complaint.</li> </ul> <p><b><u>Disposition of Complaint Process:</u></b></p> <ul style="list-style-type: none"> <li>• Upon completion of investigation, determination of the existence of a violation, and an unsuccessful</li> </ul>	<p><b><u>File Complaint Process:</u></b></p> <ol style="list-style-type: none"> <li>1. 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	<p>attempt to secure a conciliation agreement, the Administrator will refer the case to the City Attorney for a determination of how to proceed.</p> <ul style="list-style-type: none"> <li>• The City Attorney will review the case and determine if facts are sufficient to warrant initiation of an action in justice court. If so, notification is given to the Respondent and Complainant. If the facts of the case are insufficient, the City Attorney will provide written notification to Respondent, Complainant, and Administrator, who will then dismiss the complaint.</li> </ul>	<p>how to proceed.</p> <ul style="list-style-type: none"> <li>• The City Attorney will review the case and determine if facts are sufficient to warrant initiation of an action in justice court. If so, notification is given to the Respondent and Complainant. If the facts of the case are insufficient, the City Attorney will provide written notification to Respondent, Complainant, and Administrator, who will then dismiss the complaint.</li> </ul>
<b>Offences and Penal ties</b>	<p>An offence committed under this chapter by an employer employing:</p> <ul style="list-style-type: none"> <li>• Fifty (50) or fewer employees is punishable by a civil fine of not more than \$500.</li> <li>• Fifty-one (51) or more employees is punishable by a civil fine of not more than \$1,000.</li> <li>• Employment agency or labor organization are punishable by a civil fine of not more than \$1,000.</li> </ul>	<p>An Respondent who intentionally or knowingly commits, obstructs or prevents compliance with this chapter is penalized as follows:</p> <ul style="list-style-type: none"> <li>• Respondent owning or operating twenty (20) or fewer dwellings is punishable by a fine of not more than \$500.</li> <li>• Respondent owning or operating twenty-one (21) or more dwellings is punishable by a fine of not more than \$1,000.</li> <li>• Real Estate Broker or Salesperson is punishable by a fine of not more than \$1,000.</li> </ul>
<b>Other</b>	<p>Beginning 9/30/2010, the HRC will prepare an annual report to the Council and Mayor assessing the effectiveness of the ordinance implementation.</p>	

**2. Salt Lake City Government - Diversity Initiatives** – In spite of the Salt Lake City’s efforts over the years, the Human Rights Commission (HRC) report indicates that no comprehensive standards or protections with regard to employment and housing discrimination, based on sexual orientation and gender identity, have been developed for those within Salt Lake City. The following are some of the efforts made by former and current Salt Lake City leadership with regard to the City’s diversity and human rights issues.

Office of Minority Affairs – In the 1990s, under Mayor Corradini’s Administration, the Office of Minority Affairs was formally established. According to the HRC 2009 Discrimination Report, the original goal of the office was to provide outreach and assistance to Salt Lake City’s growing minority populations, including addressing housing and neighborhood concerns, improving access to public and private services, and encouraging civic participation in community councils, boards, and commissions.

Salt Lake City Human Rights Commission - In 2005, an ordinance forming the Salt Lake City Human Rights Commission (HRC) was adopted. The Commission is comprised of nine members who represent different geographic and diverse communities in Salt Lake City. The HRC ordinance states that the chapter was developed by studying other urban centers throughout the nation. The effectiveness of commissions was studied with regard to issues of: 1) diversity, 2) ability to work with city government and the community to eliminate potential discrimination in existing and future ordinances and policies and 3) to encourage and educate its citizenry to facilitate full and equal participation in the life of the city. As stated in the ordinance, “...is created for the general purpose of advising the Council and Mayor on nondiscrimination and equal treatment in all segments of society. The commission shall also provide advice and recommendations to address specific complaints of discrimination involving Salt Lake City Corporation (the “city”) departments and services.”

Office of Diversity and Human Rights - In 2008, under the current Administration, the Office of Diversity name was expanded to the Office of Diversity and Human Rights. In addition, the focus expanded to encourage a stronger and closer relationship with the Human Rights Commission and to provide additional effort on social justice issues.

**3. Demographics, Statistics and Research Findings** – The HRC 2009 report on discrimination presented information with regard to the demographics of Salt Lake City. (See entire report for additional detail and findings.) A few are presented here. Additional data on Socioeconomic (Income, Workforce, and Educational Level) and Religion can be found in the HRC report.

- Population - Salt Lake City's residential population in 2007 was estimated (US Census Bureau, 2005-2007 American Community Survey) at 182,610. The male population was estimated to be 51% of the population represent; females were estimated to be 49%.
- Ethnicity - According to the data in the HRC report, Caucasians represent 67.3% of the SLC's residential population, the 39,173 Hispanics/Latinos residents represent 21.5%, Asians make up 4.2%, the 6,247 Black/ African Americans represent 3.4%, the remaining 6,643 residents, or 3.6%, are American Indian/ Alaskan Native, Native Hawaiian/Other Pacific Islander, or some other race. In addition, an estimated 40,363 (21.4%) people living in Salt Lake City are foreign born. It is estimated that 26.8% of the foreign-born residents are naturalized citizens.
- Sexual Orientation - According to the report, an estimate of the gay, lesbian, and bisexual (GLB) individuals in Salt Lake City was completed by the Williams Institute at the University of California-Los Angeles' School of Law. An estimated 10,726 (7.6%) GLB individuals live in Salt Lake City. This information was based on the 2005 American Community Survey. Additionally, approximately 20% of Utah's 53,832 GLB population are Salt Lake City residents.

The 2009 HRC Discrimination Report recognizes the challenges in identifying and quantifying the effects of discrimination on individuals and on the City's environment. Although research specific to Salt Lake City is limited, there is a variety of medical, legal, and social science research that indicates discrimination is harmful to individuals, groups, and their City environments.

The Utah Antidiscrimination & Labor Division (UALD), through work-sharing arrangements with the U.S. Equal Employment Opportunity Commission and U.S. Department of Housing and Urban Development, has responsibility for enforcing the following federal and state laws: 1) employment antidiscrimination, 2) employment of minors, 3) implementation of wage requirements, and 4) housing laws. Violations of federal and state laws may be reported, investigated, heard, and, possibly resolved by UALD. The following chart presents the number of incidents reported to UALD for the entire state. UALD information specific to Salt Lake City is not available. According to the UALD 2008 Annual Report for the period of July 2007 to June 2008, the number of claims submitted to UALD:

- Employment discrimination complaints in Utah - 539 individuals
- Housing discrimination complaints in Utah - 105 individuals

Note: Complainants may allege multiple forms of discrimination when submitting a complaint to AULD.

Basis for Complaint	Employment Discrimination Claims July 2007 to June 2008	Housing Discrimination Claims July 2007 to June 2008
Race	106	31
Color	25	6
National Origin	119	40
Gender	219	7
Age	126	NA
Disability	209	38
Religion	47	5
Retaliation	253	24
Familial Status	NA	25
Economic Status	NA	6
<b>Total</b>	<b>1104</b>	<b>182</b>

4. Public Process -As stated in the HRC report, "We are a city of many vibrant cultures, languages, perspectives and ways of understanding the world." Efforts the Administration and Human Rights Commission have used to involve the community in the development of current and future public policies on diversity, human rights, and discrimination include:

- Dialogue on Discrimination Series - During November and December of 2008, the HRC sponsored a “Dialogue on Discrimination Series”. The five dialogues were held at various locations throughout the City and each of them focused on a different aspect of discrimination. The community was invited to attend the series or, if unable to attend, they were able to submit their stories through the City’s website. Topics included classism/poverty, people with disabilities, racism, faith, and sexual orientation. The “Dialogue” meeting format included guest speakers who presented information about discrimination followed by small focus group discussions. Meeting facilitators took notes during the focus group discussions, including indicating discrimination incidents. (Note: The HRC report notes the limitations of this data collection method, including non-representative sample and potential facilitator bias.) The incidents of discrimination reported during the Dialogue Series:

Type of Discrimination	Number of Incidents	Percentage of Total
Racism	85	26.8
Ableism	36	11.4
Sexism	12	3.8
Classism	39	12.3
Faithism	62	19.6
Appearanceism	24	7.6
Heterosexism	49	15.4
Ageism	10	3.1
<b>Total</b>	<b>317</b>	<b>100</b>

- 2008 Mayor’s Office of Diversity and Human Rights Resident Survey - Students from Westminster College in Salt Lake City conducted a survey of Salt Lake City residents. A total of 523 people responded to a survey that was distributed by email and postal mail through community organizations. Most of the respondents completed the survey online. According to the survey: 1) 59.1% of the respondents resided in Salt Lake City, 2) 54.3% were female, 3) 68.3% were White, 4) 76.7 identified themselves as heterosexual, 20.1% were gay, lesbian, or bisexual; the remaining 3.3% identified themselves as “Other”, and 5) 15.5% did not consider themselves as spiritual. On a scale of 1 to 5 with 5 being “highest priority”, 3.94% of the respondents indicated that there should be a priority on antidiscrimination and 3.82% of the respondents indicated priority preference on policy development. Details of the survey are attached, and include survey results on religious freedom, protection from hiring discrimination, workplace conditions, and community education with regard to cultural and religious norms and understanding of different groups. The survey also included six open ended questions. The questions and top response for each is listed below: (See entire survey for complete results.)
  - Question 19 - **How do you believe the issue of race and ethnicity should be addressed by Salt Lake City government?** 138 respondents indicated - Attitude (e.g. tolerance, acceptance)
  - Question 20 - **Do you think Salt Lake City embodies your vision of human rights-oriented place?** 53 respondents indicated - Negative feelings about LDS & “Dominant Culture” influence
  - Question 21 - **What makes it difficult to be a member of a minority group in Salt Lake City?** 171 respondents indicated - Attitude (e.g. stereotypes) and Negative Actions
  - Question 22 - **What needs improvement in regards to diversity and human rights in the community?** 106 respondents indicated - Positive Attitudes (e.g. tolerance, acceptance, non-discrimination)
  - Question 23 - **What could the City do to make it easier for you to live here?** - 53 respondents indicated - Legal: Rights, Ordinances, Policies & Zoning
  - Question 24 - **What is being done today that is good?** 71 respondents indicated - City Events
- 2009 Public Comment Report: Proposed Nondiscrimination Ordinance - The Administration requested feedback from constituents, City stakeholders, and the public at large in order to assess the non-discrimination ordinances being proposed. The Mayor’s Office issued a press release asking for the public to provide feedback on the proposed ordinances. Seventy-eight people responded - not all respondents

indicated their place of residence. Twenty-one of the respondents indicated that they were residents of Salt Lake City. Residents from Orem, Wellsville, South Jordan, Bountiful, Glendale, Taylorsville and Santa Clara also provided feedback on the proposed ordinance. The following table presents the general public responses to the proposed non-discrimination ordinances:

<b>Oppose</b>	<b>Support</b>	<b>Undeclared</b>	<b>Total</b>
37	36	5	78
47.4%	46.2%	6.4%	100%

The Public Comment Report includes feedback from the below mentioned groups. In addition to the feedback, recommendations and suggestions were made. A sample of the suggestions include: 1) Equality Utah’s thoughts to eliminate the exemption for employers with fewer than 15 employees and to consider naming the ordinance “Human Rights Ordinance” and 2) the Utah Apartment Association’s suggestion to require written criteria about the landlord requirements for prospective residents up front.: (See full report for further information.)

- Non-Stakeholders
  - General Public
- Organizational Stakeholders
  - Equality Utah
  - American Civil Liberties Union
  - Utah Apartment Association
  - The Disability Law Center
  - Others

**Matters at Issue and Policy Considerations** - The following are questions the Council may wish to consider:

- The Human Rights Commission Report and the AULD data indicate that employment and housing discrimination occurs for various groups. Does the Council wish to continue, and expand their current efforts, including education to business owners, with regard to all forms of discrimination that occur in Salt Lake City? For example, in the information provided by the Utah Apartment Association, it is mentioned that many tenant violations are misunderstandings as a result of poor communication between the landlord and tenant. Does the Council wish to encourage and express support to the Administration and Human Rights Commission with regard to antidiscrimination training for businesses and housing providers?
- In addition to the proposed ordinances on sexual orientation and gender identity, does the Council wish to explore or urge the Administration to explore whether it may be prudent to consider protections for other classes of people in the future?
- Both of the ordinances, employment and housing, exempt various parties from the ordinance, (See Exemptions section of the ordinance comparison table on pages 2 and 3.) and therefore excludes antidiscrimination protection for City residents. Does the Council wish to discuss the reasoning for creating exemptions with the Administration?
- Under both ordinances, the Mayor will appoint an Administrator to receive, investigate, and conciliate agreements with regard to ordinance violations. The Administrator, per both the employment and housing ordinances, also has the ability to file complaints if he/she deems necessary. The ordinances do not spell out an accountability or oversight mechanism for the work of the staff member assigned to investigate cases. Does the Council wish to ask the City Attorney’s Office and/or Administration to describe how they anticipate addressing oversight and accountability? One possibility would be to consider using the City’s Police Civilian Review ordinance as a model – for example, quarterly reports and board involvement.
- The Administration’s transmittal indicates that the budget impact will be minimal. The Council may wish to ask for further clarification on the budget impact, given that there will be an Administrator and when necessary, the City Attorney’s Office and Justice Court. In addition, fines proposed in the ordinance will either be \$500 or \$1,000 depending on the circumstances. Does the Council wish to explore how the budget will be impacted with the additional of the proposed ordinances?



## **Attachment A – Current Law**

**Current Law** – The following information is intended to provide an overview of antidiscrimination laws that currently exist and offer protection to Salt Lake City citizens. It is not a legal opinion or analysis. Information, which includes the Human Rights Commission Discrimination Report dated July 2009, was provided by the Administration.

**Federal Law** – The United States Constitution, along with numerous federal antidiscrimination laws, protects individuals from discrimination on the basis of race, sex, pregnancy, religion, national origin, age, military status, and physical and mental disability. Federal legislation includes: 1) Title VII of the Civil Rights Act of 1964, 2) Age Discrimination in Employment Act, and 3) Americans with Disabilities Act. According to the HRC report, there is proposed federal legislation, Employment Non-Discrimination Act (ENDA) that would ban discrimination on the basis of sexual orientation or gender identity. However, the legislation is still pending before Congress.

**State Law** – The State of Utah has antidiscrimination laws with regard to housing and unemployment. They are Utah Antidiscrimination Act of 1965 (UCA Section 34A-5-101) and Utah Fair Housing Act (UCA Section 57-21-1). These state laws provide protection against housing and employment discrimination based on race, sex, pregnancy, religion, national origin, age, military status, and physical and mental disability. Protections are not extended based on sexual orientation or gender identity.

**Salt Lake City Law** – There is an employment nondiscrimination ordinance that prohibits Salt Lake City Corporation from discriminating “against an otherwise qualified employee or applicant” on the basis of race, color, national origin, sex, religion, age, honorable or general service in the United States uniformed services, sexual orientation or disability.” According to the information provided in the HRC report, this ordinance goes slightly beyond state and federal mandates by providing some protection for military veterans and gay, lesbian, bisexual, and transgender (GLBT) persons.



RALPH BECKER  
MAYOR

# SALT LAKE CITY CORPORATION

OFFICE OF THE MAYOR

## CITY COUNCIL TRANSMITTAL



  
Ralph Becker, Mayor

Date Received: ML  
Date sent to Council: Oct 8, 2009

**TO:** Salt Lake City Council  
Carlton Christensen, Chair

**DATE:** October 8, 2009

**FROM:** Ralph Becker  
Mayor

**SUBJECT:** Non Discrimination Ordinances for Employment and Housing--New Chapters  
10.04 and 10.05 Salt Lake City Code

**STAFF CONTACT:** David Everitt, Chief of Staff, x7704  
Ed Rutan, City Attorney, x7710  
Yolanda Francisco-Nez, Office of Diversity and Human Rights, x7734

**DOCUMENT TYPE:** Ordinances

**RECOMMENDATION:** The Mayor recommends that the City Council adopt new Chapters  
10.04 (Employment Discrimination) and 10.05 (Housing Discrimination) of the City Code.

**BUDGET IMPACT:** Minimal; associated costs are met with current resources.

**BACKGROUND/DISCUSSION:** The proposed ordinance and attached documents represent  
almost two years of public comment and research conducted by the Salt Lake City Human  
Rights Commission (HRC), the Mayor's Office of Diversity and Human Rights (ODHR), and  
Salt Lake City staff. As a result of this research, the Administration recommends that Salt Lake  
City adopt an ordinance protecting individuals from discrimination in housing and employment  
based on sexual orientation and gender identity.

# SALT LAKE CITY CORPORATION

EDWIN P. RUTAN, II  
CITY ATTORNEY

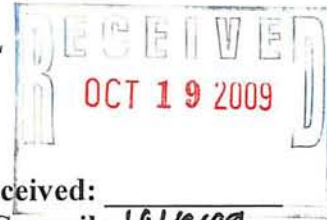
LAW DEPARTMENT

RALPH BECKER  
MAYOR

## CITY COUNCIL TRANSMITTAL



Ed Rutan, City Attorney



Date Received: \_\_\_\_\_  
Date sent to Council: 10/19/09

**TO:** Salt Lake City Council  
Carlton Christensen, Chair

**DATE:** October 19, 2009

**FROM:** Ed Rutan, City Attorney

**SUBJECT:** *Revised* Non Discrimination Ordinances for Employment and Housing—New Chapters 10.04 and 10.05 Salt Lake City Code

**STAFF CONTACT:** Ed Rutan, City Attorney, x7710  
David Everitt, Chief of Staff, x7704  
Yolanda Francisco-Nez, Office of Diversity and Human Rights, x7734

**DOCUMENT TYPE:** Ordinances

**RECOMMENDATION:** The Mayor recommends that the City Council adopt new Chapters 10.04 (Employment Discrimination) and 10.05 (Housing Discrimination) of the City Code.

**BACKGROUND/DISCUSSION:** The proposed ordinances have been revised to reflect minor clerical updates and one clarification to the Housing ordinance, section 10.05.060, “Exemptions.” The change to the Housing ordinance is meant to clarify that housing run by a for-profit entity (see definition of “person”) acting in conjunction with a religious organization is also exempt from the ordinance.

### Attachments

#1 Ordinance No. \_\_\_ of 2009 Chapters 10.04 Employment Discrimination

#2 Ordinance No. \_\_\_ of 2009 Chapter 10.05 Housing Discrimination

SALT LAKE CITY ORDINANCE  
NO. \_\_\_\_\_ of 2009  
(Unlawful discrimination in employment practices based on sexual orientation and  
gender identity)

An ordinance enacting new Chapter 10.04 *Salt Lake City Code*, relating to unlawful discriminatory employment practices based on sexual orientation or gender identity.

WHEREAS, Salt Lake City is comprised of diverse and varied groups, communities and individuals;

WHEREAS, Salt Lake City values this diversity;

WHEREAS, the City Council concluded when it created the City's Human Rights Commission (the "Commission") that discriminatory practices impede the social and economic progress of the City by preventing all people from contributing to or fully participating in the cultural, spiritual, social and commercial life of the community, which is essential to the growth and vitality of the City's neighborhoods and businesses;

WHEREAS, the City Council created the Commission to advise the Council and Mayor on nondiscrimination policy and authorized the Commission to make recommendations on the best ways to improve human relations, to eliminate discrimination and to secure full and equal participation based on the Commission's research and factual data concerning the status and treatment of diverse populations;

WHEREAS, the Commission issued a comprehensive report on discrimination in July 2009;

WHEREAS, the Commission recommended that the City adopt an ordinance prohibiting discrimination in employment on the basis of race, ethnicity, national origin, religion, age, gender, sexual orientation and gender identity and expression;

WHEREAS, the Utah Antidiscrimination Act, Utah Code Section 34A-5-101 et seq. addresses employment-related discrimination based on race; color; religion; sex; pregnancy, childbirth, or pregnancy-related conditions; national origin; age (if over 40 years of age); and disability, but does not address employment-related discrimination based on sexual orientation or gender identity;

WHEREAS, the Council has previously concluded that discrimination based on sexual orientation and gender identity are among the forms of discrimination that adversely affect the general welfare of the City and the vitality of its neighborhoods;

WHEREAS, Salt Lake City Code Section 2.53.035A prohibits Salt Lake City employees from discriminating against an otherwise qualified employee or applicant based on sexual orientation as well as race, color, national origin, sex, religion, age, honorable or general service in the United States uniformed services, or disability;

WHEREAS, Utah Code Section 10-8-84(1) grants Salt Lake City the power to “provide for the safety” of and to “promote the prosperity . . . and comfort and convenience” of “the city and its inhabitants;”

WHEREAS, the Council finds that:

[To be drafted]

NOW, THEREFORE, be it ordained by the City Council of Salt Lake City, Utah, as follows:

SECTION 1. That Chapter 10.04, *Salt Lake City Code*, pertaining to discriminatory practices in employment based upon sexual orientation and gender identity, be and the same hereby is, enacted to read as follow:

**CHAPTER 10.04  
EMPLOYMENT DISCRIMINATION**

Sections:

- 10.04.010 Purpose
- 10.04.020 Administration
- 10.04.030 No Private Right of Action; No Special Rights
- 10.04.040 Severability
- 10.04.050 Definitions
- 10.04.060 Exemptions
- 10.04.070 Unlawful Employment Practices
- 10.04.080 Unlawful Intimidation, Retaliation, And Coercion
- 10.04.090 Procedures For Filing Complaints
- 10.04.100 Investigation
- 10.04.110 Conciliation
- 10.04.120 Disposition Of A Complaint
- 10.04.130 Offenses And Penalties

**10.04.010 Purpose**

Every individual in the City has the right to work and earn wages through gainful employment. Discriminatory employment practices are detrimental because they impede the social and economic progress of the City by preventing all of the City's citizens from contributing to or fully participating in the cultural, spiritual, social and commercial life

of the community, which is essential to the growth and vitality of the City's neighborhoods and businesses. The Utah Antidiscrimination Act, Utah Code Section 34A-5-101 et seq., addresses employment related discrimination based on race; color; sex; pregnancy; childbirth, or pregnancy-related conditions; religion; national origin; age (if 40 years of age or older); and disability, but does not address discrimination based on sexual orientation or gender identity.

The City has found that discrimination in employment on the basis of sexual orientation and gender identity must be addressed. The denial or deprivation of employment rights because of an individual's sexual orientation or gender identity is detrimental to the health, safety, and welfare of the City's citizens and damages the City's economic well-being. The purpose of this chapter is to provide a clear and comprehensive mandate for the prevention and elimination of discrimination in employment in the City against individuals based upon sexual orientation or gender identity and this chapter shall be liberally construed to achieve that purpose.

#### **10.04.020 Administration**

The Mayor is responsible for administering and implementing this chapter.

#### **10.04.030 No Private Right of Action; No Special Rights**

This chapter does not create a private cause of action, nor does it create any right or remedy that is the same or substantially equivalent to the remedies provided under federal or state law. This chapter does not create any special rights or privileges which

would not be available to all of the City's citizens because every person has a sexual orientation and a gender identity.

#### **10.04.040 Severability**

If any section, sentence, paragraph, term, definition or provision of this chapter is for any reason determined to be illegal, invalid, superseded by other authority or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such portion shall be deemed a separate, distinct, and independent provision and such determination shall have no effect on the validity of any other section, sentence, paragraph, term, definition or provision of this chapter, all of which will remain in full force and effect.

#### **10.04.050 Definitions**

In this chapter:

- A. ADMINISTRATOR means the person designated by the Mayor to receive, investigate, and conciliate complaints under this chapter and includes the Administrator's designated representatives.
- B. CITY means the city of Salt Lake City, Utah.
- C. CITY ATTORNEY means the City's duly appointed City Attorney.
- D. COMPLAINANT means a person, including the Administrator, who files a complaint under this chapter.



E. CONCILIATION means the attempted resolution of issues raised in a complaint filed under this chapter, or raised in the investigation of the complaint, through informal negotiations involving the Complainant, the Respondent, and the Administrator.

F. CONCILIATION AGREEMENT means a written agreement setting forth the resolution of issues by conciliation under this chapter.

G. DISCRIMINATION means any direct or indirect exclusion, distinction, segregation, limitation, refusal, denial, or other differentiation in the treatment of a person because of a person's actual or perceived sexual orientation or gender identity or because of a person's association with any such person. Discrimination shall not be interpreted to require or to grant or accord preferential treatment to any person because of that person's sexual orientation or gender identity.

H. EMPLOYEE means any individual applying with or employed by an employer. The term does not include an elected official.

I. EMPLOYER means any person employing fifteen (15) or more employees in the City for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year, and includes any agent of such a person.

J. EMPLOYMENT AGENCY means any person, and any agent of a person, undertaking to procure employees or opportunities to work for any other person in the City or holding itself out to be equipped to procure employees or opportunities to work for any other person in the City.

K. GENDER IDENTITY means a person's actual or perceived gender identity, appearance, mannerisms, or other characteristics of an individual with or without regard to the person's sex at birth.

L. LABOR ORGANIZATION means any organization that exists for the purpose in whole or in part of collective dealing with Employers concerning grievances, terms or conditions of employment; or other mutual aid or protection in connection with employment.

M. MAYOR means the duly elected or appointed and qualified Mayor of Salt Lake City.

N. OTHERWISE QUALIFIED means a person who possesses the following required by an employer for any particular job, job classification, or position:

1. education;
2. training;
3. ability;
4. moral character;
5. integrity;
6. disposition to work;
7. adherence to reasonable rules and regulations; and
8. other job related qualifications required by an employer.

O. PERSON means one or more individuals, partnerships, associations, corporations, legal representatives, trusts or trustees, receivers and the City.

P. RELIGIOUS ORGANIZATION means a religious corporation, association, educational institution, society, or any corporation or association which is a wholly owned subsidiary or agency of any religious organization or association or religious corporation sole.

Q. RESPONDENT means a person identified in a complaint as having committed an unlawful practice under this chapter.

R. SEXUAL ORIENTATION means a person's actual or perceived orientation as heterosexual, homosexual, or bisexual.

S. UNLAWFUL PRACTICE means a discriminatory act or practice relating to employment that is prohibited under this chapter.

#### **10.04.060 Exemptions**

This chapter does not apply to:

A. a religious organization;

B. an expressive association whose employment of a person protected by this chapter would significantly burden the association's rights of expressive association under *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000); the United States government, any of its departments or agencies, or any corporation wholly owned by it;  
or

C. the State of Utah or any of its departments, agencies, or political subdivisions except for the City.

#### **10.04.070 Unlawful Employment Practices**

A. Employers. An employer may not refuse to hire, promote, discharge, demote, or terminate any person, and may not retaliate against, harass, or discriminate in matters of compensation or in terms, privileges, and conditions of employment against

any person otherwise qualified because of a person's sexual orientation or gender identity.

B. Employment agencies. An employment agency may not refuse to list and properly classify for employment, or refuse to refer a person for employment, in a known available job for which the person is otherwise qualified because of a person's sexual orientation or gender identity.

C. Labor organizations. A labor organization may not exclude any person otherwise qualified from full membership rights in the labor organization, expel the person from membership in the labor organization, or otherwise discriminate against or harass any of the labor organization's members in full employment of work opportunity, or representation, because of a person's sexual orientation or gender identity.

D. Training programs. An employer, labor organization, joint apprenticeship committee, or vocational school, providing, coordinating, or controlling apprenticeship programs, or providing, coordinating, or controlling on-the-job-training programs, instruction, training, or retraining programs may not deny to, or withhold from, any qualified person, the right to be admitted to, or participate in any apprenticeship training program, on-the-job-training program, or other occupational instruction, training or retraining program because of a person's sexual orientation or gender identity.

E. Notices and advertisements. Unless based upon a bona fide occupational qualification, or required by and given to an agency of government for security reasons, an employer, employment agency, or labor organization may not print, or circulate, or cause to be printed or circulated, any statement, advertisement, or publication, use any form of application for employment or membership, or make any inquiry in connection

with prospective employment or membership that expresses, either directly or indirectly any limitation, specification, or discrimination because of a person's sexual orientation or gender identity.

It is unlawful for a joint labor-management committee controlling apprenticeship or other training or retraining (including on-the-job training programs) to print or publish, or cause to be printed or published, any notice or advertisement relating to admission to, or employment in, any program established to provide apprenticeship or other training by the joint labor-management committee that indicates any preference, limitation, specification, or discrimination based on sexual orientation or gender identity.

Nothing in this chapter prohibits a notice or advertisement from indicating a preference, limitation, specification, or discrimination based on sexual orientation or gender identity when sexual orientation or gender identity is a bona fide occupational qualification for employment.

F. No Preferential Treatment. Nothing in this chapter shall be interpreted to require any employer, employment agency, labor organization, vocational school, joint labor-management committee, or apprenticeship program subject to this chapter to grant preferential treatment to any person because of the person's sexual orientation or gender identity on account of an imbalance which may exist with respect to the total number or percentage of persons of any sexual orientation or gender identity employed by any employer, referred or classified for employment by an employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to or employed in, any apprenticeship or other training program, in comparison with the

total number or percentage of persons of that sexual orientation or gender identity available in the City's available work force.

#### **10.04.080 Unlawful Intimidation, Retaliation, And Coercion**

It is unlawful for any person to discriminate against, harass, threaten, harm, damage, or otherwise penalize another person for opposing an unlawful practice, for filing a complaint, or for testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing under this chapter.

#### **10.04.090 Procedures For Filing Complaints**

A. Any person who claims to have been injured by an unlawful employment practice subject to the City's jurisdiction under this Chapter may file a complaint with the Administrator. A complaint may also be filed by the Administrator if the Administrator has reasonable cause to believe that a person has committed an unlawful employment practice. A complaint must be filed within 180 calendar days after an alleged unlawful employment practice has occurred.

B. A complaint must be in writing on a form provided by the Administrator, made under oath or affirmation, and contain the following information:

1. The Complainant's name, address, and signature;
2. The date the alleged unlawful employment practice occurred;
3. A statement of the facts upon which the allegation of an unlawful employment practice are based; and
4. The Respondent's name and address.

- C. Promptly after the filing of a complaint, the Administrator shall:
1. provide the Respondent named in the complaint written notice that a complaint alleging the commission of an unlawful employment practice has been filed against the Respondent;
  2. furnish a copy of the complaint to the Respondent; and
  3. advise the Respondent of the Respondent's procedural rights and obligations, including the right to file a written, signed, and verified informal answer to the complaint within 15 days after service of notice of the complaint.

D. Not later than the 15th day after service of the notice and copy of the complaint, a Respondent may file an answer to the complaint. The answer must be in writing, made under oath or affirmation, and contain the following information:

1. The Respondent's name, address, telephone number, and signature of the Respondent or the Respondent's attorney, if any; and
2. A concise statement of facts in response to the allegations in the complaint, including facts of any defense or exception.

#### **10.04.100 Investigation**

A. Upon the filing of a complaint, the Administrator shall commence an investigation to determine the facts behind the complaint and whether there is reasonable cause to believe the Respondent committed an unlawful employment practice, except that no investigation may commence if, after reviewing the allegations of the complaint, the

Administrator determines that the complaint does not come within the scope of this chapter. Upon determining that a particular complaint does not come within the scope of this chapter, the Administrator shall dismiss the complaint, notify the Complainant and Respondent and take no further action.

B. In connection with any investigation of a complaint filed under this chapter, the Administrator shall seek the voluntary cooperation of any person to:

1. obtain access to premises, records, documents, individuals, and any other possible source of information;
2. examine, record, and copy necessary materials; and
3. take and record testimony or statements of any person reasonably necessary for the furtherance of the investigation.

C. The Administrator may request the City Recorder to issue an executive branch subpoena or subpoena duces tecum to compel the attendance of a witness or the production of relevant materials or documents pursuant to Chapter 2.59 of the City Code. For purposes of Section 2.59.020A, the Administrator shall be deemed the Mayor's designee.

D. The Administrator may dismiss a complaint during the investigation and prior to referral to the City Attorney if the Administrator determines that:

1. the complaint was not filed within the required time period;
2. the location of the alleged unlawful employment practice is not within the City's jurisdiction;



3. the employer does not employ a sufficient number of employees in the City to meet this chapter's jurisdictional requirements;
4. the alleged unlawful employment practice is not a violation of this chapter;
5. the Complainant refuses to cooperate with the Administrator in the investigation of the complaint or enforcement of an executed conciliation agreement;
6. the Complainant cannot be located after the Administrator has performed a reasonable search; or
7. a conciliation agreement has been executed by the Complainant and Respondent.

#### **10.04.110 Conciliation**

A. During or after the investigation, but subsequent to the mailing of the notice of the complaint to the Respondent, the Administrator shall, if the Respondent appears to have committed an unlawful employment practice, attempt to conciliate the complaint. In conciliating a complaint, the Administrator shall try to achieve a just resolution and obtain assurances that the Respondent will satisfactorily remedy any violation of the Complainant's rights and take action to ensure the elimination of both present and future unlawful employment practices. A conciliation agreement may include: sensitivity training for the Respondent and/or the Respondent's employees; the Respondent's agreement to adopt and pursue a policy of non-discrimination in

employment practices; and the Respondent's agreement to not engage in discriminatory practices in the future.

B. A conciliation agreement executed under this section must be in writing in a form approved by the City Attorney and must be signed and verified by the Respondent and the Complainant, subject to approval of the Administrator who shall indicate approval by signing the agreement.

C. If a Respondent voluntarily enters into a conciliation agreement, the Administrator shall immediately dismiss the complaint.

#### **10.04.120 Disposition Of A Complaint**

A. If, upon completion of an investigation of a complaint, the Administrator determines that an unlawful employment practice has occurred and is unable to secure an acceptable conciliation agreement from the Respondent, then the Administrator shall refer the case to the City Attorney. The Administrator shall refer the entire file to the City Attorney, who shall determine how best to pursue further action, if any, on the complaint.

B. If the City Attorney determines that cause exists to find that an unlawful employment practice occurred and the facts are sufficient to warrant the initiation of an action in justice court, then the City Attorney shall provide written notification to the Respondent and the Complainant that an action to enforce this chapter may be initiated in justice court. If the City Attorney determines that there is no cause that an unlawful employment practice occurred or that the facts are insufficient to warrant the initiation of an action in justice court, the City Attorney shall provide written notification to the

Respondent and the Complainant and notify the Administrator who shall then dismiss the complaint.

**10.04.130 Offenses And Penalties**

A person violates this chapter if the person engages in any action made unlawful by this chapter. An offense committed under this chapter by an employer employing fifty (50) or fewer employees is punishable by a civil fine of not more than \$500.00. An offense committed under this chapter by an individual employing fifty-one (51) or more employees or by an employment agency or labor organization is punishable by a civil fine of not more than \$1,000.00.

SECTION 2. That new Section 10.02.110C, Salt Lake City Code, pertaining to an annual report by the City’s Human Rights Commission, be and the same hereby is enacted to read as follows:

C. Beginning September 30, 2010, the commission shall prepare an annual report for the Mayor and City Council assessing the effectiveness of the City’s actions in implementing Chapters 10.04 and 10.05 of this Title.

SECTION 3. This ordinance shall take effect on April 2, 2010.

Passed by the City Council of Salt Lake City, Utah this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
CHAIRPERSON

ATTEST:

\_\_\_\_\_  
CHIEF DEPUTY CITY RECORDER

Transmitted to Mayor on \_\_\_\_\_.

Mayor's Action: \_\_\_\_\_ Approved. \_\_\_\_\_ Vetoed.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CHIEF DEPUTY CITY RECORDER

(SEAL)

Bill No. \_\_\_\_\_ of 2009.

Published: \_\_\_\_\_.

HB\_ATTU-#9773-V6-Employment\_Non-Discrimination\_Ordinance\_(9-09).DOC

APPROVED AS TO FORM  
Salt Lake City Attorney's Office  
Date 10/19/09  
By [Signature]

SALT LAKE CITY ORDINANCE  
NO. \_\_\_\_\_ of 2009  
(Unlawful discrimination in housing practices based on sexual orientation  
and gender identity)

An ordinance enacting Chapter 10.05 *Salt Lake City Code*, relating to unlawful discriminatory housing practices based on sexual orientation or gender identity.

WHEREAS, Salt Lake City is comprised of diverse and varied groups, communities and individuals;

WHEREAS, Salt Lake City values this diversity;

WHEREAS, the City Council concluded when it created the City's Human Rights Commission (the "Commission") that discriminatory practices impede the social and economic progress of the City by preventing all people from contributing to or fully participating in the cultural, spiritual, social and commercial life of the community, which is essential to the growth and vitality of the City's neighborhoods and businesses;

WHEREAS, the City Council created the Commission to advise the Council and Mayor on nondiscrimination policy and authorized the Commission to make recommendations on the best ways to improve human relations, to eliminate discrimination and to secure full and equal participation based on the Commission's research and factual data concerning the status and treatment of diverse populations;

WHEREAS, the Commission issued a comprehensive report on discrimination in July 2009;

WHEREAS, the Commission recommended that the City adopt an ordinance prohibiting discrimination in housing on the basis of race, ethnicity, national origin, religion, age, gender, sexual orientation and gender identity and expression;

WHEREAS, the Utah Fair Housing Act Utah Code Section 57-21-1 et seq. addresses housing-related discrimination based on race; color; religion; sex; national origin; familial status; source of income; or disability, but does not address housing-related discrimination based on sexual orientation or gender identity;

WHEREAS, the Council has previously concluded that discrimination based on sexual orientation and gender identity are among the forms of discrimination that adversely affect the general welfare of the City and the vitality of its neighborhoods;

WHEREAS, Utah Code Annotated section 10-8-84(1) grants Salt Lake City the power to “provide for the safety” of and to “promote the prosperity . . . and comfort and convenience” of “the city and its inhabitants;”

WHEREAS, the Council finds that:

[To be drafted]

NOW, THEREFORE, be it ordained by the City Council of Salt Lake City, Utah,  
as follows:

SECTION 1. That Chapter 10.05, *Salt Lake City Code*, pertaining to discriminatory practices in housing based upon sexual orientation and gender identity, be and the same hereby is, enacted to read as follow:

**CHAPTER 10.05**  
**HOUSING DISCRIMINATION**

Sections:

10.05.010 Purpose

10.05.020 Administration

- 10.05.030 No Private Right of Action; No Special Rights
- 10.05.040 Severability
- 10.05.050 Definitions
- 10.05.060 Exceptions
- 10.05.070 Unlawful Practices
- 10.05.080 Unlawful Intimidation, Retaliation, And Coercion
- 10.05.090 Procedures For Filing Complaints
- 10.05.100 Investigation
- 10.05.110 Conciliation
- 10.05.120 Disposition Of A Complaint
- 10.05.130 Offenses And Penalties

**10.05.010 Purpose**

Every individual in the City has the right to seek housing. Discriminatory housing practices are detrimental because they impede the social and economic progress of the City by preventing all of the City’s citizens from contributing to or fully participating in the cultural, spiritual, social and commercial life of the community, which is essential to the growth and vitality of the City’s neighborhoods and businesses.

The Utah Fair Housing Act, Utah Code Section, 57-21-1 et seq., addresses housing related discrimination based on race; color; religion; sex; national origin; familial status; source of income; and disability, but does not address discrimination based on sexual orientation or gender identity.

The City has found that discrimination in housing on the basis of sexual orientation and gender identity must be addressed. The denial or deprivation of access to housing because of an individual's sexual orientation or gender identity is detrimental to the health, safety, and welfare of the City's citizens and damages the City's economic well-being. The purpose of this chapter is to provide a clear and comprehensive mandate for the prevention and elimination of discrimination in housing in the City against individuals based upon sexual orientation or gender identity and this chapter shall be liberally construed to achieve that purpose.

#### **10.05.020 Administration**

The Mayor is responsible for administering and implementing this chapter.

#### **10.05.030 No Private Right of Action; No Special Rights**

This chapter does not create a private cause of action, nor does it create any right or remedy that is the same or substantially equivalent to the remedies provided under federal or state law. This chapter does not create any special rights or privileges which would not be available to all of the City's citizens because every person has a sexual orientation and a gender identity.

#### **10.05.040 Severability**

If any section, sentence, paragraph, term, definition or provision of this chapter is for any reason determined to be illegal, invalid, superseded by other authority or unconstitutional by any court of competent jurisdiction or by any state or federal



regulatory authority having jurisdiction thereof, such portion shall be deemed a separate, distinct, and independent provision and such determination shall have no effect on the validity of any other section, sentence, paragraph, term, definition or provision of this chapter, all of which will remain in full force and effect.

### **10.05.050 Definitions**

In this chapter:

A. ADMINISTRATOR means the person designated by the Mayor to receive, investigate, and conciliate complaints under this chapter and includes the Administrator's designated representatives.

B. CITY means the city of Salt Lake City, Utah.

C. CITY ATTORNEY means the duly appointed City Attorney.

D. COMPLAINANT means a person, including the Administrator, who files a complaint under this chapter.

E. CONCILIATION means the attempted resolution of issues raised in a complaint filed under this chapter, or raised in the investigation of the complaint, through informal negotiations involving the Complainant, the Respondent, and the Administrator.

F. CONCILIATION AGREEMENT means a written agreement setting forth the resolution of issues by conciliation under this chapter.

G. DISCRIMINATION means any direct or indirect exclusion, distinction, segregation, limitation, refusal, denial, or other differentiation in the treatment of a person or persons because of a person's actual or perceived sexual orientation or gender identity or because of a person's association with any such person. Discrimination shall not be

interpreted to require or to grant or accord preferential treatment to any person because of that person's sexual orientation or gender identity.

H. DWELLING means any building or structure, or a portion of a building or structure, occupied as, or designed or intended for occupancy as, a residence of one or more families inside the City and vacant land that is offered for sale or lease for the construction or location of a dwelling inside the City.

I. GENDER IDENTITY means a person's actual or perceived gender identity, appearance, mannerisms, or other characteristics of a person with or without regard to the person's sex at birth.

J. MAYOR means the duly elected or appointed and qualified Mayor of Salt Lake City.

K. PERSON includes one or more individuals, corporations, limited liability companies, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under the United States Bankruptcy Code, receivers, and fiduciaries.

L. REAL ESTATE BROKER or SALESPERSON means a principal real estate broker, an associate real estate broker, or a real estate sales agent as those terms are defined in Utah Code Section 61-2-2 or any successor provision.

M. RELIGIOUS ORGANIZATION means a religious corporation, association, educational institution, society, or any corporation or association which is a wholly owned subsidiary or agency of any religious organization or association or religious corporation sole.

N. RENT means to lease, sublease, let, or otherwise grant for a consideration the right to occupy premises not owned by the occupant.

O. RESIDENTIAL REAL ESTATE RELATED TRANSACTION means the making or purchasing loans or providing other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling; or secured by residential real estate; or selling, brokering, or appraising residential real property inside the City.

P. RESPONDENT means a person identified in a complaint as having committed an unlawful housing practice under this chapter.

Q. SEXUAL ORIENTATION means a person's actual or perceived orientation as heterosexual, homosexual, or bisexual.

R. UNLAWFUL PRACTICE means a discriminatory act or practice relating to housing that is prohibited under this chapter.

#### **10.05.060 Exemptions**

This chapter does not apply to a temporary or permanent residence facility operated by a nonprofit organization; a charitable organization; or a person in conjunction with a religious organization, association, or society, including any dormitory operated by a public or private educational institution, if the discrimination is by sexual orientation or gender identity for reasons of personal modesty or privacy or in the furtherance of a religious institution's free exercise of religious rights under the First Amendment of the United States Constitution.

This chapter does not prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in

conjunction with a religious organization, association, or society, from limiting the sale, rental, or occupancy of dwellings it owns or operates for primarily noncommercial purposes to persons of the same religion, or from giving preference to such persons.

This chapter does not prohibit distinctions based on a person's inability or failure to fulfill the terms and conditions, including financial obligations, of a lease, rental agreement, contract of purchase or sale, mortgage, trust deed, or other financing agreement.

This chapter does not apply to: 1) the United States government, any of its departments or agencies, or any corporation wholly owned by it; or 2) the government of the State of Utah or any of its departments, agencies, or political subdivision, except for the City.

#### **10.05.070 Unlawful Housing Practices**

- A. It is a discriminatory housing practice to do any of the following:
1. refuse to sell or rent after the making of a bona fide offer, refuse to negotiate for the sale or rental, or otherwise deny or make unavailable any dwelling from any person because of the person's sexual orientation or gender identity;
  2. discriminate against any person in the terms, conditions, or privileges of the sale or rental of any dwelling or in providing facilities or services in connection with the dwelling because of the person's sexual orientation or gender identity;

3. represent to any person that any dwelling is not available for inspection, sale, or rental when in fact the dwelling is available;
4. to make a representation orally or in writing or make, print, circulate, publish, post, or cause to be made, printed, circulated, published, or posted any notice, statement, or advertisement, or to use any application form for the sale or rental of a dwelling, that directly or indirectly expresses any preference, limitation, or discrimination based on sexual orientation or gender identity, or expresses any intent to make any such preference, limitation, or discrimination;
5. to induce or attempt to induce, for profit, any person to buy, sell, or rent any dwelling by making representations about the entry or prospective entry into the neighborhood of persons of a particular sexual orientation or gender identity;
6. engage in any discriminatory housing practices because of sexual orientation or gender identity based upon a person's association with another person.

B. It is a discriminatory housing practice for a real estate broker or salesperson to do any of the following because of a person's sexual orientation or gender identity:

1. to discriminate against any person in making available a residential real estate transaction, or in the terms or conditions of the

transaction, inside the City, because of a person's sexual orientation or gender identity;

2. to deny any person access to, or membership or participation in, any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings inside the City or to discriminate against any person in the terms or conditions of access, membership, or participation in the organization, service, or facility inside the City because of a person's sexual orientation or gender identity; or
3. engage in any discriminatory housing practices inside the City because of sexual orientation or gender identity based upon a person's association with another person.

C. Exceptions. This chapter does not apply to the following:

1. The sale or rental of any single-family dwelling, if the owner:
  - (i) does not own an interest in or title to four or more single-family dwellings held for lease or sale at one time located inside the City;
  - (ii) has not sold two or more single-family dwellings inside the City in which the owner did not reside in the dwelling within the 24-month period preceding the sale or rental of the dwelling; and

- (iii) does not use the services or facilities of any real estate broker, agent, or salesperson , or of any other person in the business of selling or renting dwellings, in connection with the sale or rental of the dwelling inside the City.
- 2. The rental of a dwelling that is occupied or intended to be occupied by no more than four families living independently of each other, when the owner actually maintains and occupies part of the dwelling as a residence.
- 3. Nothing in this section prohibits conduct against a person because of the person's conviction by a court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance under state or federal law.

#### **10.05.080 Unlawful Intimidation, Retaliation, And Coercion**

It is unlawful for any person to discriminate against, harass, threaten, harm, damage, or otherwise penalize another person for opposing an unlawful practice, for filing a complaint, or for testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing under this chapter.

#### **10.05.090 Procedures For Filing Complaints**

A. Any person who claims to have been injured by an unlawful housing practice may file a complaint with the Administrator. A complaint may also be filed by the Administrator if the Administrator has reasonable cause to believe that a person has

committed an unlawful housing practice. A complaint must be filed within 180 calendar days after an alleged unlawful housing practice has occurred.

B. A complaint must be in writing on a form provided by the Administrator, made under oath or affirmation, and contain the following information:

1. The Complainant's name, address, and signature;
2. The date the alleged unlawful housing practice occurred;
3. A statement of the facts upon which the allegation of an unlawful practice are based; and
4. The Respondent's name and address.

C. Promptly after the filing of a complaint, the Administrator shall:

1. provide the Respondent named in the complaint written notice that a complaint alleging the commission of an unlawful housing practice has been filed against the Respondent;
2. furnish a copy of the complaint to the Respondent; and
3. advise the Respondent of the Respondent's procedural rights and obligations, including the right to file a written, signed, and verified informal answer to the complaint within 15 days after service of notice of the complaint.

D. Not later than the 15th day after service of the notice and copy of the complaint, a Respondent may file an answer to the complaint. The answer must be in writing, made under oath or affirmation, and contain the following information:



1. The Respondent's name, address, telephone number, and signature of the Respondent or the Respondent's attorney, if any; and
2. A concise statement of facts in response to the allegations in the complaint, including facts of any defense or exception.

### **10.05.100 Investigation**

A. Upon the filing of a complaint, the Administrator shall commence an investigation to determine the facts behind the complaint and whether there is reasonable cause to believe the Respondent committed an unlawful housing practice, except that no investigation may commence if, after reviewing the allegations of the complaint, the Administrator determines that the complaint does not come within the scope of this chapter. Upon determining that a particular complaint does not come within the scope of this chapter, the Administrator shall dismiss the complaint, notify the Complainant and the Respondent and take no further action.

B. In connection with any investigation of a complaint filed under this chapter, the Administrator shall seek the voluntary cooperation of any person to:

1. obtain access to premises, records, documents, individuals, and any other possible source of information;
2. examine, record, and copy necessary materials; and
3. take and record testimony or statements of any person reasonably necessary for the furtherance of the investigation.

C. The Administrator may request the City Recorder to issue an executive branch subpoena or subpoena duces tecum to compel the attendance of a witness or the production of relevant materials or documents pursuant to Chapter 2.59 of the City Code. For purposes of Section 2.59.020A, the Administrator shall be deemed the Mayor's designee.

D. The Administrator may dismiss a complaint during the investigation and prior to referral to the City Attorney if the Administrator determines that:

1. the complaint was not filed within the required time period;
2. the location of the alleged unlawful housing practice is not within the City's jurisdiction;
3. the alleged unlawful housing practice is not a violation of this chapter;
4. the Complainant refuses to cooperate with the Administrator in the investigation of the complaint or enforcement of an executed conciliation agreement;
5. the Complainant cannot be located after the Administrator has performed a reasonable search; or
6. a conciliation agreement has been executed by the Complainant and Respondent.

#### **10.05.110 Conciliation**

A. During or after the investigation, but subsequent to the mailing of the notice of the complaint to the Respondent, the Administrator shall, if it appears that the

Respondent has committed an unlawful housing practice, attempt to conciliate the complaint. In conciliating a complaint, the Administrator shall try to achieve a just resolution and obtain assurances that the Respondent will satisfactorily remedy any violation of the Complainant's rights and take action to ensure the elimination of both present and future unlawful housing practices. A conciliation agreement may include: sensitivity training for the Respondent and/or the Respondent's employees; the Respondent's agreement to adopt and pursue a policy of non-discrimination in its practices; and the Respondent's agreement to not engage in discriminatory practices in the future.

B. A conciliation agreement executed under this section must be in writing in a form approved by the City Attorney and must be signed and verified by the Respondent and the Complainant, subject to approval of the Administrator who shall indicate approval by signing the agreement.

C. If a Respondent voluntarily enters into a conciliation agreement, the Administrator shall immediately dismiss the complaint.

#### **10.05.120 Disposition Of A Complaint**

A. If, upon completion of an investigation of a complaint, the Administrator determines that an unlawful housing practice has occurred and is unable to secure an acceptable conciliation agreement from the Respondent, then the Administrator shall refer the case to the City Attorney. The Administrator shall refer the entire file to the City Attorney, who shall determine how best to pursue further action, if any, on the complaint.

B. If the City Attorney determines that cause exists that an unlawful housing practice occurred and the facts are sufficient to warrant the initiation of an action in justice court, then the City Attorney shall provide written notification to the Respondent and the Complainant that an action to enforce this chapter may be initiated in justice court. If the City Attorney determines that there is no cause that an unlawful housing practice occurred or that the facts are insufficient to warrant the initiation of an action in justice court, the City Attorney shall provide written notification to the Respondent and the Complainant and notify the Administrator who shall then dismiss the complaint.

**10.05.130 Offenses And Penalties**

A person violates this chapter if the person intentionally or knowingly violates a provision of this chapter or if the person intentionally or knowingly obstructs or prevents compliance with this chapter. An offense committed under this chapter by a Respondent owning or operating twenty (20) or fewer dwellings is punishable by a fine of not more than \$500.00. An offense committed under this chapter by a Respondent owning or operating twenty-one (21) or more dwellings or by a Real Estate Broker or Salesperson is punishable by a fine of not more than \$1,000.00.

SECTION 2. This ordinance shall take effect on April 2, 2010.

Passed by the City Council of Salt Lake City, Utah this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
CHAIRPERSON

ATTEST:

\_\_\_\_\_  
CHIEF DEPUTY CITY RECORDER

Transmitted to Mayor on \_\_\_\_\_.

Mayor's Action: \_\_\_\_\_ Approved. \_\_\_\_\_ Vetoed.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CHIEF DEPUTY CITY RECORDER

(SEAL)

Bill No. \_\_\_\_\_ of 2009.

Published: \_\_\_\_\_.

HB\_HB\_ATTYS-#9782-V6-Housing\_Non-Discrimination\_Ordinance\_(9-09).DOC

APPROVED AS TO FORM  
Salt Lake City Attorney's Office  
Date 10/19/09  
By [Signature]