

# Council Communication

## August 2, 2016, Business Meeting

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### Second Reading of an Ordinance amending Ashland Municipal Code section 10.110 Fair Housing

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**FROM:**

Linda Reid, Housing Program Specialist, Community Development Department, reidl@ashland.or.us

**SUMMARY**

This is the second reading of an ordinance updating the Fair Housing section of the Ashland Municipal Code (Ch. 10.110) to newly establish domestic partnership status and age as protected classes. The suggested language to be included in the Fair Housing ordinance represents the cumulative efforts of two years' worth of research, community dialog and discussion, and includes some general "housekeeping" updates to the ordinance needed to bring it up to date with State of Oregon protections and City policies.

**BACKGROUND AND POLICY IMPLICATIONS:**

The Council approved first reading of an ordinance updating the Fair Housing section of the Ashland Municipal Code at the regular business meeting on July 19, 2016. The City has received one comment regarding the changes to the fair housing ordinance.

In 2013, the Associated Students of Southern Oregon (ASSOU) student government prioritized having student status added as a protected class to the City's Fair Housing Ordinance in response to discrimination students have reportedly experienced in trying to secure rental housing in Ashland. The ASSOU student government approached the City Council to request amendments to the City's Fair Housing ordinance. In April of 2014, the Council directed the Housing and Human Services Commission to study the issue and develop a recommendation on whether students should be added as a protected class. For a more complete description of the actions undertaken by the Commission and the student government please see the Council Communication dated [March 14, 2016](#).

The ordinance has been amended to reflect the feedback from the City Council at its study session held on March 14<sup>th</sup>. The changes to the ordinance include language to clarify that student grants/scholarships or loans do qualify as a "source of income," and as such a landlord cannot disqualify a prospective tenant that lists such income on a rental application on that basis alone. The proposed ordinance also expands protections to newly include "Age" and "Domestic Partnership" as protected classes, and removes the exceptions for households that receive section 8 assistance. The protected classes proposed are in addition to the existing State and federally protected classes covered by the City's ordinance. The existing protected classes include; race, color, religion, sex, sexual orientation, gender identity, national origin, source of income, disability and familial status. Under fair housing law it is unlawful to discriminate against members of a protected class in housing transactions. The ordinance amendments also included clarifying language recognizing emancipated minors as protected under the newly proposed prohibition on "Age" discrimination; Clarification regarding the



penalty for violating the ordinance (violation would be a Class I (most severe) violation). These clarifications and amendments have been incorporated into the ordinance to address concerns raised by council members at the study session held on March 14<sup>th</sup>.

**COUNCIL GOALS SUPPORTED:**

- 5. Seek opportunities to enable all citizens to meet basic needs.
- 5.3 Leverage partnerships with non-profit and private entities to build social equity programming.
- 7. Keep Ashland a family-friendly community.
- 7.3 Support land-use plans and policies that encourage family-friendly neighborhoods.

**FISCAL IMPLICATIONS:**

N/A

**COMMISSION AND STAFF RECOMMENDATION AND REQUESTED ACTION:**

- The Housing and Human Services Commission recommends approval of the ordinance as presented.
- Staff recommends that the Council approve second reading of the draft ordinance as presented.

**SUGGESTED MOTION:**

Move to approve second reading by title only of the ordinance titled, “An Ordinance Amending Ashland Municipal Code Chapter 10.110 Fair Housing.”

**ATTACHMENTS:**

- Fair Housing Ordinance
- 20160719 Public comment received



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING ASHLAND MUNICIPAL  
CODE CHAPTER 10.110 FAIR HOUSING

Annotated to show ~~deletions~~ and additions to the code sections being modified. Deletions are **~~bold lined through~~** and additions are **bold underlined**.

**WHEREAS**, Article 2. Section 1 of the Ashland City Charter provides:

Powers of the City. The City shall have all powers which the constitutions, statutes, and common law of the United States and of this State expressly or impliedly grant or allow municipalities, as fully as though this Charter specifically enumerated each of those powers, as well as all powers not inconsistent with the foregoing; and, in addition thereto, shall possess all powers hereinafter specifically granted. All the authority thereof shall have perpetual succession.

**WHEREAS**, the above referenced grant of power has been interpreted as affording all legislative powers home rule constitutional provisions reserved to Oregon Cities. City of Beaverton v. International Ass'n of Firefighters, Local 1660, Beaverton Shop 20 Or. App. 293; 531 P 2d 730, 734 (1975); and

**WHEREAS**, the City of Ashland contracted with the Fair Housing Council of Oregon to complete and Analysis of Impediments to Fair Housing Choice which recommended that the City undertake an update of the Fair Housing Ordinance, and

**WHEREAS**, the City of Ashland Housing Commission considered the above-referenced recommendation and finalized the recommended amendments to the Ashland Municipal Code at a duly advertised public hearing on August 22, 2012 and following deliberations recommended approval of the amendments to the City Council on October 16, 2012.

**THE PEOPLE OF THE CITY OF ASHLAND DO ORDAIN AS FOLLOWS:**

**SECTION 1.** AMC Chapter 10.110 Fair Housing is hereby amended to read as follows:

**SECTION 10.110.010 Declaration of Policy.**

It is hereby declared to be the policy of Ashland, Oregon, in the exercise of its **policy police** power for the public safety, public health, and general welfare to assure equal opportunity to all persons to live in decent housing facilities **~~regardless of race, color, religion, sex, sexual orientation, gender identity, national origin, source of income, disability, or familial status,~~** and, to that end, to prohibit discrimination in housing by any persons. (Ord. 2746, 1994)

## SECTION 10.110.020 Definitions.

When used herein:

- A. "Real property" includes buildings, structures, lands, tenements, leaseholds, cooperatives and condominiums.
- B. "Discrimination" or "discriminatory housing practice" means any difference in treatment based upon race, color, religion, age, sex, sexual orientation, national origin, source of income, disability, familial status, or domestic partnership status; or any act that is unlawful under this ordinance. (Ord. 2713, 1993)
- C. "Person" includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations and all other groups or combinations.
- D. "Owner" includes a lessee, sublessee, co-tenant, assignee managing agent or other person having the right of ownership or possession, or the right to sell, rent or lease any housing accommodation.
- E. "Financial Institution" includes any person, as defined herein, engaged in the business of lending money or guaranteeing losses.
- F. "Housing accommodation" or "Dwelling" means any building, mobile home or trailer, structure, or portion thereof which is occupied as, or designed, or intended for occupancy, as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, mobile home or trailer, structure, or portion thereof or any real property, as defined herein, used or intended to be used for any of the purposes set forth in this subsection.
- G. "Open market" means the market ~~which is~~ comprised of members of the general public who become informed of the availability for sale, purchase, rental or lease to members of the general public of any housing accommodation, whether informed through a real estate broker or by advertising by publication, signs or by any other advertising methods directed to the public or any portion thereof.
- H. "Older Person" A person of age fifty-five (55) or older.
- I. ~~"Familial status"~~ "Familial" means a relationship between one or more individuals who have not attained 18 years of age and an adult with whom the individual(s) is (are) domiciled and who is (1) a parent or person having legal custody of the individual(s), or (2) an adult to whom such parent or person having such custody has given written permission to provide housing for the individual(s). ~~"Familial status"~~ "Familial" also ~~means the condition~~ includes the characteristic of being ~~and an~~ individual, regardless of age or domicile, who is pregnant or is in the process of securing legal custody of an individual who has not attained 18 years of age.
- J. "Disability" means a physical or mental impairment which substantially limits one or more major life activities. "Disability" includes having a record of such an impairment or being regarded as having such an impairment
- K. "Sexual orientation" means attraction to or selection of a sexual partner according to gender. "Sexual orientation" includes having a history of that attraction or selection, or being identified with that attraction or selection. "Sexual orientation" is limited to heterosexuality, homosexuality, and bisexuality.
- L. "Source of Income" means the type of financial resources a person uses to support himself or herself and his or her dependents, including but not limited to money and property from any occupation, profession or activity, from any contract, settlement or

agreement, from federal or state payments, **grants, scholarships, loans, Federal Student Aid, Social Security benefits, Section 8 housing choice voucher assistance,** court ordered payments, gifts, bequests, annuities, life insurance policies, **pensions, retirement savings,** and compensation for illness or injury. ~~but excluding any money or property~~  
**Source of income does not include income derived from a specific occupation or income** derived in a manner made illegal or criminal by any **State or Local** statute or ordinance.

M. “Gender Identity” means a person’s actual or perceived sex, including a person’s, appearance, expression or behavior, whether or not that identity, appearance, expression or behavior is different from that traditionally associated with the person’s sex at birth.

N. “Fair Housing Officer” means the City Attorney or designee who will serve as the designated Fair Housing Officer.

**O. “National Origin” means a person’s country of birth or ancestry.**

**P. “Age” means having the characteristic of being 18 years of age or older or except that for purposes of section 10.110.040 B (1), “age” also means the characteristic of having received a decree of emancipation from the State of Oregon pursuant to ORS 419B.552.**

**Q. “Domestic partnership” means a relationship between two persons who meet the following requirements: live as a family in a relationship of mutual support, caring and commitment, and intend to remain in such a relationship; neither is married or the domestic partner of any other person; are each 18 years of age or older; are not related by blood kinship closer than would bar marriage in the state of Oregon; and are mentally competent to consent to contract. Domestic partnership shall also be demonstrated by having registered, certified or affirmed the relationship with any appropriate, legally established registry with substantially similar criteria within any jurisdiction in the United States.**

#### **SECTION 10.110.030 Unlawful Practices.**

In connection with any of the transactions set forth in this section which affect any housing accommodation in the open market, or in connection with any public sale, rental or lease of any housing accommodation, it shall be unlawful within the City of Ashland for a person, owner, financial institution, real estate broker or real estate salesman, or any representative of the above, to:

- A. Refuse to sell, rent or lease, or deny to or withhold any housing accommodation from a person because of race, color, religion, **age**, sex, sexual orientation, gender identity, national origin, source of income, disability, familial status **or domestic partnership status**; or
- B. ~~To d~~ **D**iscriminate against a person in the terms, conditions or privileges of the sale, rental or lease of any housing accommodation, or in the furnishing of facilities of services in connection therewith; or
- C. ~~To r~~ **R**epresent to a person that any housing accommodation is not available for inspection, sale, rental or lease when in fact it is so available, or to refuse to permit a person to inspect any housing accommodation on the open market because of race, color, religion, **age**, or national origin, disability, sex, sexual orientation, gender identity, source of income, familial status **or domestic partnership status**; or

- D. ~~Make, publish, print, circulate, post or mail, or cause to be made, published, printed, circulated, posted or mailed, any notice, statement or advertisement, or announce a policy, or sign or use a form of application for the sale, rental, lease or financing of any housing accommodation, or make a record of inquiry in connection with the prospective sale, rental, lease or financing of any housing accommodation, which indicates any discrimination or any intent to make a discrimination.~~
- E. ~~To~~ Retaliate or discriminate in any manner against a person because that person has opposed a practice declared unlawful by this article, or because that person has filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding, hearing or conference under this ordinance; or
- F. Inquire into the sexual orientation of a purchaser, renter, or lessee, or prospective purchaser, renter or lessee. (Ord. 2746, 1994)
- G. ~~A refusal~~ **Refuse** to permit, at the expense of the a person with disabilities, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises, except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.

**SECTION 10.110.040 Exemptions.**

- A. This ordinance shall not apply to:
  - 1. A religious organization, association, or society or any nonprofit institution or organization operating, supervised, or controlled by or in conjunction with a religious organization, association, or society, which limits the sale, rental, or occupancy, of dwellings which it owns or operates for other than commercial purposes to persons of the same religion, or which gives preference to such persons, unless membership in such a religion is restricted on account of race, color, **age**, sex, sexual orientation, **gender identity**, national origin, disability, familial status, **or domestic partner status**.
  - 2. A private club not open to the public, which incident to its primary purpose or purposes, provides lodgings which it owns or operates for other than a commercial purpose, and which limits the rental or occupancy of such lodgings to its members or gives preference to its members.
  - 3. The leasing or renting of a room or rooms within an individual living unit which is occupied by the lessor as his or her primary residence.
- B. The requirements of this ordinance on prohibition of discrimination on the basis of familial status shall not apply to:
  - 1. Dwellings provided under any State or Federal program specifically designed to assist older persons, or to dwellings in bona fide retirement communities designed and operated for older persons or dwellings otherwise intended and operated exclusively for older persons, equipped with facilities specifically designed for the physical and social needs of such persons.
  - 2. Applicability of reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling unit.
  - 3. Any housing provided, owned or operated by the State or Federal Government.
  - ~~4. Any housing unit of less than four hundred (400) square feet gross floor area.~~

- C. The prohibitions in section ~~10.011.020~~ 10.110.020 against discrimination on the basis of sexual orientation and gender identity do not apply to;
1. ~~To the~~ The leasing or renting of a room or rooms within an individual living unit which is occupied by the lessor as his or her residence.
  2. ~~To the~~ The leasing or renting of a room or rooms within individual units where one of the units is owner occupied;
  3. ~~To~~ Space within a church, temple, synagogue, religious school, or other facility used primarily for religious purposes.
- D. The prohibitions in section ~~10.011.030~~ 10.110.020 against discriminating on the basis of source of income do not prohibit:
1. Inquiry into and verification of a source or amount of income;
  2. Inquiry into, evaluation of, and decisions based on the amount, stability, security or creditworthiness of any source of income;
  3. Screening prospective purchasers and tenants on bases not specifically prohibited by this chapter or state or federal law;
  - ~~4. Refusal to contract with a governmental agency under 42 U.S.C. 1437f(a) "Section 8".~~
- E. The prohibitions in section ~~10.011.030~~ 10.110.020 against discriminating on the basis of gender identity do not prohibit:
1. Health or athletic clubs or other entities that operate gender-specific facilities involving public nudity such as showers and locker rooms, from requiring an individual to document their gender or transitional status. Such documentation can include but is not limited to a court order, letter from a physician, birth certificate, passport, or driver's license.

**SECTION 10.110.050 Procedures.**

Any person aggrieved by an unlawful practice prohibited by this ordinance may file a complaint with the Fair Housing Officer no more than one year after the alleged unlawful practice occurred. The Fair Housing Officer or a duly authorized representative shall investigate each complaint and attempt to resolve each complaint. Failure to achieve a resolution acceptable to both parties and compliance with this ordinance shall cause the Fair Housing Officer to forward the complaint and findings to appropriate state and federal officials.

**SECTION 10.110.060 Enforcement and Administration.**

- A. The provisions of this section are in addition to state and federal law, nothing in this section precludes complainants from pursuing other remedies available under any appropriate government agency or under the statutes and procedures established in ORS Chapter 659A.
- B. Any person claiming to be aggrieved by an unlawful discriminatory act under the provisions of this code shall have a cause of action in any court of competent jurisdiction for damages and such other remedies as may be appropriate. Election of remedies and other procedural issues relating to the interplay between administrative proceedings and private rights of action shall be handled as provided for in ORS 659A.870. 659A. 885 and 659A. 890. The court may grant such relief as it deems appropriate, including but not limited to such relief as is provided in ORS 659A.885.

**SECTION 10.110.070 Penalties.**

**Violation of this chapter is a Class I violation, punishable in accordance with AMC 1.08.020.**

**SECTION 10.110.080 Severability of invalid provisions.**

In case any one or more of the sections, subsections, clauses, or provisions of this ordinance, or the application of such sections, subsections, clauses or provisions to any situations, circumstances, or person, shall for any reason be held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect any other sections or provisions of this ordinance or the application of such sections, subsections, clauses or provisions to any other situation, circumstance or person, and it is intended that this ordinance shall be constructed and applied as if such had not been included in this ordinance. (Ord. 2527, 1989; Ord. 2713, 1993)

**SECTION 2. Codification.** Provisions of this Ordinance shall be incorporated in the City Code, and the word “ordinance” may be changed to “code”, “article”, “section”, or another word, and the sections of this Ordinance may be renumbered or re-lettered, provided however, that any Whereas clauses and boilerplate provisions (*i.e.*, Sections 2) need not be codified, and the City Recorder is authorized to correct any cross-references and any typographical errors.

The foregoing ordinance was first read by title only in accordance with Article X, Section 2(C) of the City Charter on the \_\_\_\_ day of \_\_\_\_\_, 2016, and duly PASSED and ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Barbara M. Christensen, City Recorder

SIGNED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
John Stromberg, Mayor

Reviewed as to form:

\_\_\_\_\_  
David H. Lohman, City Attorney



## Linda Reid

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**From:** Kevin Stout <kevinpstout@gmail.com>  
**Sent:** Tuesday, July 19, 2016 5:03 PM  
**To:** Linda Reid  
**Subject:** Housing Ordinance

Linda,

I am the Vice President of SOROA. Mark is away on summer business trips and is not available at this time. I would like to offer our comments on the proposed ordinance.

First, we commend the city for including language protecting source of income and domestic partnership status in the ordinance.

Our organization has major concerns with the proposed, and unprecedented expansion of the City's police powers to enforce matters that have traditionally been handled by State or Federal agencies or through a private right of action in civil court. Section 10.110.070 is particularly troubling. This provision would allow the City, by and through the Ashland Police Department and the City Attorney, to issue citations in the amount of \$2,000.00 for violating the proposed ordinance. In our opinion issuing large fines without giving the City the higher burden of proof entitled to a criminal defendant is unconstitutional and would be challenged in court. In my personal opinion, as a resident of Ashland, I feel that it is a waste of resources to burden the City Attorney and Courts with these matters that have been appropriately handled by State and Federal authorities and by a private right of action.

As a matter of policy the language throughout the proposed ordinance including "age" as a protected class is unnecessary and will not achieve the stated goals. Any adult or emancipated minor could file a complaint with the Fair Housing Officer for any perceived discrimination and cause landlords to incur the expense to defend against the complaint. The discrimination complaints would need to be investigated and due to the potential liabilities, defended vigorously by landlords. This increased liability in the Ashland rental market would drive landlords to cease renting or substantially increase rents and applications fees.

Ironically, the additional cost of screening procedures to protect against complaints about age discrimination will preclude many young people from finding rental housing in Ashland because landlords will adopt stricter criteria when considering applicants.

The housing problems in Ashland are not an issue of discrimination. The problems are due to the large demand for housing and limited availability and the changing demographics of the community. More affluent people moving to Ashland has restricted the availability of rental properties and caused increased competition for limited housing. Adding additional police powers, unnecessarily protecting a large class of people and increasing the costs of housing are not good solutions to the housing problems. This proposed ordinance, as written is bad public policy that will have a negative affect on renters, landlords, and our City's Municipal Court system.

Please forward our concerns to the City Council and the Mayor. If you would like us to appear for any public comment we are happy to do so.

*Kevin Stout*  
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