

# Chapter 18

## Non-Discrimination

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### Article I

#### General Provisions

#### §18-1 Policy.

- A. It is the intent of the City of Kalamazoo that no person be denied the equal protection of the laws; nor shall any person be denied the enjoyment of their civil rights.
- B. The prohibitions against discrimination provided for in this Chapter do not preempt Federal or State law, but are intended to supplement existing State and Federal civil rights law to prohibit discrimination in the areas of employment, public accommodations, and housing not addressed at State or Federal law, especially in regards to actions taken because of an individual's source of income, status as a victim of domestic violence, prior arrests, or conviction record; provided, however, this Chapter shall be construed and applied in a manner consistent with First Amendment jurisprudence regarding the freedom of speech and exercise of religion.

#### §18-2 Definitions

As used in this Chapter, the following words and phrases have the following meanings:

##### **AGE**

Chronological age.

##### **ARREST RECORD**

Information indicating that a person has been apprehended, detained, taken into custody, held for investigation, or restrained by a law-enforcement department or military authority due to an accusation or suspicion that the person committed a crime. Arrest record includes pending criminal charges, where the accusation has not yet resulted in a final judgment, acquittal, conviction, plea, dismissal, or withdrawal of charges.

##### **CITY MANAGER**

The City Manager of the City of Kalamazoo or his or her designee.

##### **CONTRACTOR**

A person who by contract furnishes services, materials or supplies to the City. "Contractor" does not include persons who are merely creditors or debtors of the City, such as those holding the City's notes or bonds or persons whose notes, bonds or stock is held by the City.

## **CONVICTION RECORD**

Information regarding the history of criminal convictions of an individual in any jurisdiction, including time served in prison, jail, juvenile detention, probation, parole, rehabilitation or diversion programs, and placement on a sex offender registry.

## **DISCRIMINATE**

To make a decision, offer to make a decision, or refrain from making a decision based in whole or in part on an individual's actual or perceived race, color, religion, national origin, sex, age, height, weight, marital status, physical or mental disability, family status, sexual orientation or gender identity, educational affiliation, source of income, status as a victim of domestic violence, governmental identification method, arrest record and conviction record (collectively "protected classes").

A. Discrimination based on sex includes sexual harassment, which means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communication of a sexual nature when:

- (1) Submission to such conduct or communication is made a term or condition, either explicitly or implicitly, to obtain employment, public accommodations, or housing.
- (2) Submission to or rejection of such conduct or communication by an individual is used as a factor in decisions affecting such individual's employment, public accommodations or housing.
- (3) Such conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations or housing, or creating an intimidating, hostile, or offensive employment, public accommodations, or housing environment.

B. Discrimination based on sex includes discrimination based on an actual or perceived sexual orientation or gender identity of an individual

C. Discrimination based on actual or perceived physical or mental limitation includes discrimination because of the use by an individual of adaptive devices or aids.

D. Discrimination also includes the use of facially neutral policies or practices that have a disparate impact on members of a protected class.

E. Discrimination also includes conduct directed at another based on their membership in a protected class which creates an intimidating, hostile or offensive environment regarding employment, public accommodation or housing.

## **EDUCATIONAL AFFILIATION**

The fact of being enrolled, or not enrolled, in any educational institution.

**EMPLOYER**

Any person employing one or more individuals engaged in a lawful business or enterprise but does not include the employment of an individual by his or her parent, sibling, spouse, or child.

**EMPLOYMENT AGENCY**

A person who undertakes to procure employees for an employer or procures opportunities for individuals to be employed by an employer.

**FAMILY STATUS**

A. An individual who is pregnant, or

B. One or more individuals under the age of 18 residing with a parent or other person having custody or in the process of securing legal custody of the individual or individuals or residing with the designee of the parent or other person having or securing custody, with the written permission of the parent or other person.

**GENDER IDENTITY**

A person’s actual or perceived gender, including a person’s self-image, appearance, expression, or behavior, whether or not that self-image, appearance, expression, or behavior is different from that traditionally associated with the person’s sex as assigned at birth as being either female or male.

**GOVERNMENTAL IDENTIFICATION METHOD**

The legal form of identification that an individual may use, including any valid, government-issued identification, such as a State ID card, Federal immigration documentation, municipal or county ID card, or passport issued by a foreign country.

**INDIVIDUAL**

A human being, as distinguished from a person, as defined herein.

**LABOR ORGANIZATION**

An organization of any kind or structure in which employees participate or are members and which exists for the purposes, in whole or part, of dealing with employers concerning the terms and conditions of employment of its participants or members, whether or not such organization is subordinate to or affiliated with a national or international labor organization.

**MARITAL STATUS**

The state of being married, single, widowed, divorced, or separated.

**PERCEIVED**

Refers to the perception of the person who acts, and not to the perception of the person for or against whom the action is taken.

**PERSON**

An individual, association, partnership, agency, organization, or corporation, public or private including the employees, members and officers thereof.

**PHYSICAL OR MENTAL DISABILITY**

A determinable physical or mental characteristic resulting from disease, injury, congenital condition of birth, or functional disorder and is unrelated to one’s ability to safely perform the work involved in jobs or positions available to such person for hire or promotion; or unrelated to one’s ability to acquire, rent and maintain property; or unrelated to one’s ability to utilize and benefit from the goods, services, activities, privileges and accommodations of a place of public accommodation “Physical or mental disability” does not include any condition caused by the current illegal use of a controlled substance, the use of alcohol liquor, or use of marijuana by an individual.

**PLACE OF PUBLIC ACCOMMODATION**

An educational, governmental, health, entertainment, cultural, recreational, refreshment, transportation, financial institution, business or facility of any kind, whose goods, services, facilities, privileges, advantages or accommodations are extended, offered, sold, or otherwise made available to the public.

**PREGNANT**

The condition of carrying a developing human embryo in the uterus.

**RELIGIOUS ORGANIZATION**

An organization, church, group, or body of communicants that is organized not for pecuniary profit that regularly gathers for worship and religious purposes and includes a religious-based private school that is not organized for pecuniary profit.

**RETALIATION**

An adverse action taken against an individual who files or participates in a complaint investigation under this Chapter.

**SEXUAL ORIENTATION**

Male or female homosexuality, heterosexuality or bisexuality, whether by orientation or practice. Sexual orientation does not include the physical or sexual attraction to a minor by an adult.

Article II  
**Conduct Prohibited**

**§ 18-3 Discriminatory public accommodation practices.**

- A. Except as otherwise provided in this Chapter, no person shall discriminate in making available full and equal access to all goods, services, activities, privileges, and accommodations of any place of public accommodation.
- B. Public accommodations must be made accessible to individuals with disabilities in compliance with State and federal law and regulations.
- B. Nothing in this Chapter permits or requires access to any place of public accommodation for

the purpose or intent of engaging in criminal conduct, offensive or disorderly conduct, or conduct which represents a threat to the public health, safety, or welfare.

- C. Nothing in this Chapter shall require the construction or provision of unisex, single-user restrooms, changing rooms, locker rooms, or shower facilities.

**§ 18-4 Discriminatory employment practices.**

Except as otherwise provided in this Chapter:

- A. No employer shall discriminate in the employment, compensation, work classifications, conditions or terms, promotion or demotion, or termination of employment of any person.
- B. No labor organization shall discriminate in limiting membership, conditions of membership, or termination of membership of any person in any labor union or apprenticeship program.
- C. No employment agency shall discriminate in the procurement or recruitment of any person for possible employment with an employer.

**§ 18-5 Nondiscrimination by City contractors.**

- A. All contractors proposing to do business with the City of Kalamazoo shall satisfy the nondiscrimination administrative policy adopted by the City Manager in accordance with the guidelines of this section.
- B. A contractor shall, as a condition of being deemed a responsible bidder, at the time of its submission to the City in responding to an invitation for bids or request for proposals, certify in writing that it complies with the provisions of this Chapter.
- C. All City contracts shall provide that breach of the obligation not to discriminate is a material breach of the contract. The contractor shall be liable for any costs or expenses incurred by the City in obtaining from other sources the work and services to be rendered or performed or the goods or properties to be furnished or delivered to the City under the contract.

**§ 18-6 Discriminatory effects.**

No person shall adopt, enforce or employ any policy, practice, or requirement which has the effect of creating unequal opportunities according to actual or perceived race, color, religion, national origin, sex, age, height, weight, family status, marital status, physical or mental disability, educational association, source of income, status as a survivor of domestic violence, governmental identification method, arrest record, or conviction history for a person to obtain employment, public accommodation, or housing, except for a bona fide business necessity. Such a bona fide business necessity does not arise due to a mere inconvenience or because of suspected or actual objection to such a person by neighbors, customers, or other persons but shall require a demonstration that the policy or requirement is reasonably necessary to the normal operation of the person's business.

**§ 18-7 Other prohibited practices.**

- A. No person shall adopt, enforce or employ any policy or requirement, or publish, post or broadcast any advertisement, sign or notice which discriminates or indicates discrimination in providing employment, public accommodations, or housing.

- B. No person shall discriminate in the publication or distribution of advertising material, information or solicitation regarding *housing*, employment or public accommodations.
- C. No agent, broker, labor organization, employment agency or any other intermediary shall discriminate in making referrals, listings or providing information with regard to employment, public accommodations, or housing. A report of the conviction of any such person for a violation of this Chapter shall be made to the applicable licensing or regulatory agency for such person or business.
- D. No person shall coerce, threaten or retaliate against a person for making a complaint or assisting in the investigation regarding a violation or alleged violation of this Chapter, nor require, request, conspire with, assist or coerce another person to retaliate against a person for making a complaint or assisting in an investigation.
- E. No person shall conspire with, assist, coerce or request another person to discriminate in any manner prohibited by this Chapter.
- F. No person shall use any history information other than convictions contained in a criminal record.

**§ 18-8 Exceptions.**

Notwithstanding anything contained in this Chapter, the following practices shall not be violations of this Chapter:

- A. To engage in a bona fide effort to establish an affirmative action program to improve opportunities in employment for minorities and women consistent with applicable State and
- B. To discriminate based on a person's age when such discrimination is required by State, Federal, or local law.
- C. To refuse to enter into a contract with an unemancipated minor.
- D. To refuse to admit to a place of public accommodation serving alcoholic beverages a person under the legal age for purchasing alcoholic beverages.
- E. To refuse to admit persons under 18 years of age to a business providing entertainment or selling literature which the operator of said business deems unsuitable for minors.
- F. For an educational institution to limit the use of its facilities to those affiliated with such institution.
- G. For a religious organization to restrict employment opportunities for officers, religious instructors and clergy to individuals of that denomination. It is also permissible for a religious organization to restrict employment opportunities, educational facilities, and dormitories that are operated as a direct part of its religious activities to persons who are members of the denomination involved or who agree to conform to the moral tenets of that religious organization

- H. To provide discounts on products or service to students, or on the basis of age.
- I. For a governmental institution to restrict any of its facilities or to restrict employment opportunities based on duly adopted institutional policies that conform to Federal and state laws and regulations.
- J. To restrict participation in an instructional program, athletic event or on an athletic team on the basis of age, sex, height, or weight consistent with applicable state or federal laws and regulations.
- K. To restrict membership in a private club that is not open to the public except to the extent that private clubs which permit members to invite guests on the premises are not exempted as it concerns a member's guest.
- L. To the use of marital status or family status limitations in a health or pension plan if such limitations conform to Federal and State laws and regulations.

### Article III Enforcement

#### § 18-9 **Complaint Process; Information and Investigation**

- A. Any person claiming to have been discriminated against in violation of this Chapter or Chapter 18A “Fair Housing” must file a signed, written complaint with the City Manager or the designee of the City Manager setting forth the details, including the names of the parties involved, contact information for the complainant, dates, witnesses, and other factual matters relevant to the claim, within 91 days of the incident forming the basis of the complaint. Complaints not filed with the specified timeframe will not be considered.
- B. The City Manager or the designee of the City Manager, with the assistance of the City Attorney or designee of the City Attorney, will review the complaint to determine its relevance to applicable city ordinances. Upon completion of the review, the complaint will be addressed through one of the following actions:
  - (1) Referral of the complaint to an appropriate state, federal or local authority for investigation. If referred to an external agency, the complainant will receive written notification of the referral by the City.
  - (2) Conduct an investigation of the complaint with the assistance of the City Attorney’s Office and personnel from any other City departments.
  - (3) Dismiss the complaint, if after review with the City Attorney’s Office, the allegations do not constitute a violation of city ordinances.
- C. In the course of the investigation, the City Manager or the designee of the City Manager may request a person to produce books, papers, records or other documents which may be relevant to the complaint being investigated. If said person does not comply with such request, the City Attorney may issue subpoenas for the production of materials, and if

necessary, apply to the Kalamazoo County Circuit Court for an order requiring production of said materials.

- D. No person shall provide false information to any authorized City employee investigating a complaint initiated under this section. Violation of this section is a misdemeanor.
- E. Action on the complaint will be completed within 91 days of receipt of the complaint and the parties will be notified in writing if additional time is necessary.
- E. After the completion of an investigation, the City Manager shall give written notice of the results of the investigation to the Civil Rights Board, the person who filed the complaint, and the person accused of the violation. If the investigation establishes that a violation of City ordinances occurred, the City Manager or his/her designee may attempt to resolve the matter by a voluntary settlement agreement between the involved parties without legal action.

#### **§18-10 Voluntary Settlement Agreements.**

- A. Cases may be resolved by a voluntary settlement, agreed to by both parties, or by an administrative closure, if the request for settlement is withdrawn or a complaint is filed in court or with another administrative agency based on the same incident of discrimination.
- B. If the investigation establishes probable cause of discrimination, an offer to settle the matter will take place as soon as possible. The City may enter into enforceable agreements with a respondent to terminate the discriminatory conduct and reverse the effects of past discrimination.
- C. The respondent will be asked to 1) cease and desist from the specific discriminatory act or practice involved in the complaint, and 2) implement whatever actions and policies are necessary to remedy the discrimination uncovered in the investigation.
- D. Violations of voluntary settlement agreements are violations of this Chapter, subjecting the respondent to prosecution and equitable action to enforce the agreement.

#### **§ 18-11 Injunctions**

The City Attorney may commence a civil action to obtain injunctive relief to prevent discrimination prohibited by this chapter, to reverse the effects of such discrimination or to enforce a voluntary settlement agreement.

#### **§ 18-12 Prosecution.**

- A. Prosecution for violation of this Chapter may be initiated by complaint of the affected person on the basis of a violation of a voluntary settlement agreement or at the direction of the Civil Rights Board on the basis of an investigation undertaken by the City Manager.
- B. Violation of this chapter shall be prosecuted by the City Attorney as a municipal civil infraction pursuant to the provisions of the Revised Judicature Act of 1961, MCLA 600.101 et seq.

**§ 18-13 Penalties.**

- A. A violation of any provision of this chapter is a municipal civil infraction punishable by a fine of not more than \$2000, plus all costs of the action. The court may issue and enforce any judgment, writ, or order necessary to enforce this chapter. This may include reinstatement, payment of lost wages, hiring and promotion, sale, exchange, lease or sublease of real property, admission to a place of public accommodation, and other relief deemed appropriate.
- B. Each day upon which a violation occurs shall constitute a separate and new violation.
- C. A violation proved to exist on a particular day shall be presumed to exist on each subsequent day unless it is proved that the violation no longer exists.
- D. Nothing contained in this chapter shall be construed to limit in any way the remedies, legal or equitable, which are available to the City or any person for the prevention or correction of discrimination.

**Article IV**

**Civil Rights Board**

**§ 18-14 Civil Rights Board creation; composition.**

- A. To implement the general policy and purposes set forth in this Chapter, the City Commission establishes a Civil Rights Board.
- B. The Civil Rights Board consists of seven voting members appointed by the Mayor and approved by the City Commission and two ex-officio members who shall have no vote, but who may otherwise fully participate in any meeting of the Board.
- C. Members appointed to the Board shall be residents of the City reflecting and representing the diversity of the Kalamazoo community and be able to demonstrate experience in civil rights issues and law. Members to the Board may be appointed who are not residents of the City, not to exceed two members, when there is a valid reason for such appointment, such as the member works in the City, or has special expertise to carry out the duties and responsibilities of the Board.

**§ 18-15 Appointment and terms of Board members; filling of vacancies; termination of appointments.**

- A. Except for the initial appointments, members of the Board are appointed for a term of three years. The initial appointments to the Board will consist of 3 members appointed for a 3-year term, 2 members appointed for a 2-year term and 2 members appointed for a 1-year term. Members of the Board may serve up to two consecutive terms. Vacancies may be filled by the same appointment procedure for the remainder of an unexpired term.
- B. The ex officio Board members shall be appointed by the Mayor and approved by the City Commission. One member shall be a City Commissioner and the other member shall be a City officer or employee, recommended by the City Manager, but who shall not be a City

Commissioner or the City Manager.

**§ 18-16 Election of Board officers.**

The Board shall elect a Chairperson for a term of 1 year, with no limit on the number of terms a member may serve as Chairperson, to conduct its meetings and as it may desire, elect a Vice Chairperson to act in the absence of the Chairperson, from its members. Rules for the conduct of Board meetings shall be stated in the bylaws, as determined by the Board and approved by the City Commission.

**§ 18-17 Secretary to Board; administrative support.**

The City Manager shall designate someone other than himself/herself to serve as Secretary to the Board and shall provide such administrative support as may be required.

**§ 18-18 Board subject to State law.**

Meetings of the Board shall be conducted in compliance with the Michigan Open Meetings Act, MCLA § 15.261 et seq. and its records shall be available to the public under the Michigan Freedom of Information Act, MCLA § 15.231, et seq.

**§ 18-19 Duties and responsibilities of Board.**

The Board shall exercise its authority, functions, powers, and duties in accordance with all ordinances, rules, regulations, orders, and city charter of the City of Kalamazoo. The authority, duties, and responsibilities of the Board shall include the following:

- A. Foster mutual understanding and respect among the people in the City and discourage and prevent unlawful discriminatory practices toward the protected classes described in this Chapter.
- B. Review claims of discrimination brought by residents of the City of Kalamazoo following investigation of the claim by the City Manager or the designee of the City Manager.
- C. Review and analyze of conditions, practices, attitudes, policies, and other factors within Kalamazoo that contribute to discriminatory impact and further inequities, as well as evaluating the impact of anti-discrimination efforts.
- D. Make recommendations to the City Commission and City Manager on ways to improve City programs and ordinances to eliminate discrimination or remove effects of past discrimination.
- E. Engage in public awareness-building activities to ensure residents are informed of increased local protections and the role of the Board, including issuing an annual report of the activity of the Board.
- F. Engage with federal, state, and local agencies to assist in addressing issues of discrimination in the City.
- G. The Board shall provide an annual report to the City Commission regarding complaints received and actions taken.

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