



Legislation Text

File #: O-037-17, **Version:** 1

Council President Steel

Repealing Toledo Municipal Code Chapter 554 "Employment, Real Estate Discrimination", enacting a new Chapter 554, "Discrimination Prohibited" to include gender identity as a protected class and set forth additional prohibitions.

SUMMARY & BACKGROUND:

The City of Toledo has a governmental interest in protecting all citizens from discrimination and protecting the physical and psychological well-being of all citizens, including lesbian, gay, bisexual and transgender individuals and in protecting its citizens against exposure to serious harms caused by sexual orientation change efforts. It is the desire of the Council to prohibit within the geographic boundaries of the City of Toledo the use of sexual orientation or gender identity change, including reparative and conversion therapy, which have been demonstrated to be harmful to the physical and psychological well-being of lesbian, gay, bisexual and transgender persons.

The American Psychiatric Association in December 1998 published a position statement opposing any psychiatric treatment, including reparative or conversion therapy, based upon the assumption that a patient should change his or her sexual orientation. The American Psychological Association's Task Force on Appropriate Therapeutic Responses to Sexual Orientation ("APA Task Force") concluded that sexual orientation change efforts can pose critical health risks to lesbian, gay and bisexual people, including, among other things, confusion, depression, social withdrawal, suicidality, substance abuse, self-hatred, high-risk sexual behaviors, and a feeling of being dehumanized. The American Psychiatric Association further published a position statement in March of 2000 in which it stated "Psychotherapeutic modalities to convert or 'repair' homosexuality are based on developmental theories whose scientific validity is questionable. Furthermore, anecdotal reports of 'cures' are counterbalanced by anecdotal claims of psychological harm."

The American Psychological Association issued a resolution on Appropriate Affirmative Responses to Sexual Orientation Distress and Change Efforts in 2009, which states: "[T]he [American Psychological Association] advises parents, guardians, young people, and their families to avoid sexual orientation change efforts that portray homosexuality as a mental illness or developmental disorder and to seek psychotherapy, social support, and educational services that provide accurate information on sexual orientation and sexuality, increase family and school support, and reduce rejection of sexual minority youth." The American Academy of Child and Adolescent Psychiatry, in 2012, published a similar statement in its journal that, "[g]iven that there is no evidence that efforts to alter sexual orientation are effective, beneficial or necessary, and the possibility that they carry the risk of significant harm, such interventions are contraindicated."

The American Academy of Pediatrics, the American Medical Association Council on Scientific Affairs, the National Association of Social Workers, the American Counseling Association Governing Council, and the American Psychoanalytic Association each have asserted in reports or position statements that sexual orientation change efforts, including reparative therapy or conversion therapy, are not recommended and may

be harmful.

NOW, THEREFORE, Be it ordained by the Council of the City of Toledo:

SECTION 1. That Chapter 554 of the Toledo Municipal Code which states as follows:

"CHAPTER 554

Employment, Real Estate Discrimination

554.01. Definitions

(a) "Discriminate", "discriminates" or "discrimination" means any distinction or difference in treatment of any person solely on the grounds or because of their race, religious creed, color, national origin, ancestry, sex, handicap, age or sexual orientation.

(b) "Employee" means any person hired or employed by any employer in consideration for direct or indirect monetary wages, compensation and/or profit or as a volunteer except those engaged in domestic service, personal service or an employee of an organized religious congregation or an employee of an organization or institution limited to members of a single religious faith.

(c) "Employer" means any person, one or more individuals, a partnership, association or corporation hiring or employing another in consideration for direct or indirect monetary wages, compensation and/or profit or as a volunteer except as provided in Section [554.02\(b\)](#).

(d) "Labor organization" means any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers on behalf of an employee concerning grievances, terms or conditions of employment or of mutual aid or protection in connection with employment.

(e) "Employment agency" means any person, company, partnership, association or corporation which undertakes with or without compensation to procure opportunities to work, or to procure, recruit, refer or place employees.

(f) "Person selling real property" means any person, corporation, partnership, association or trustee who sells real property, leases or rents real property, or, who as agent for another, performs any of the functions listed herein.

(g) "Purchaser of real property" means any occupant, prospective occupant, lessee, prospective lessee, buyer or prospective buyer of any real property.

(h) "Financial institution" means any person, partnership, association or corporation engaged in the business of lending money or guaranteeing loans on real property.

(i) "Sexual orientation" means a person's actual or perceived heterosexuality, bisexuality, homosexuality, or gender identity, by orientation or practice.

(j) "Places of public accommodation" means any inn, restaurant, eating house, barbershop, public conveyance by air, land, or water, theater, store, or other place for the sale of merchandise, or any other place for the sale of merchandise, or any other place of public accommodation or amusement where the accommodation, advantages, facilities, or privileges thereof are available to the public.

(k) "Business establishment" means any entity, however organized, which furnishes goods or services to the general public. An otherwise qualifying establishment which has membership requirements is considered to

furnish services to the general public if its membership requirements consist only of the payment of fees or consist of requirements under which a substantial portion of the residents of this City could qualify.

554.02. Prohibited employment discrimination; exemptions.

(a) No employer, labor union, employment agency or any individual shall:

(1) Discriminate against any person with regard to hire, discharge, tenure, upgrading, promotion, terms or conditions of employment or union membership solely on grounds of race, religious creed, color, national origin, ancestry, sex, handicap, age, or sexual orientation.

(2) Publish or cause to be published any notice or advertisement relating to the employment or membership which contains any specification or limitation as to race, religious creed, color, national origin, ancestry, sex, handicap, age, or sexual orientation.

(3) Require of any applicant, as a condition of employment or membership, any information concerning his or her race, religious creed, color, national origin, ancestry, sex, handicap, age, or sexual orientation.

(4) Aid, abet, encourage or incite the commission of any discrimination in employment practice prohibited by this chapter.

(b) Exemptions.

(1) Any employer of less than twelve persons is not subject to the provisions of subsection (a) hereof; furthermore, members of the immediate family of an employer shall not be included in determining the number of employees.

(2) Any religious organization or institution whose membership or service is limited to persons of a particular religious faith is not subject to the provisions of subsection (a) hereof.

(3) Any private organization having a purely social or fraternal purpose is not subject to the provisions of subsection (a) hereof.

(4) Any type of employment where religion, religious creed or nationality would usually and normally be considered an essential qualification of employment is not subject to the provisions of subsection (a) hereof.

554.03. Prohibited real estate discrimination.

(a) No person selling or renting real property shall, solely because of race, color, religion, national origin, ancestry, sex, handicap, age, familial status, military status or sexual orientation:

(1) Refuse to sell or rent property to a purchaser or renter of real property.

(2) Evict from or deny occupancy to a purchaser or renter of any real property.

(3) Make any distinction, discrimination or restriction against a purchaser or renter in the sale, rental, price, terms, conditions or privileges relating to the sale, rental, lease, occupancy of real property or in the furnishing of any facilities or services in connection therewith.

(4) Refuse to show any real property or otherwise attempt to prevent the sale, rental or lease of any real property to a purchaser or renter.

(b) No person selling or renting real property shall publish, circulate, issue or display, or cause to be published, circulated, issued or displayed, any communication, notice, advertisement or sign of any kind

relating to the sale, rental or leasing of real property which indicates any preference, limitation or discrimination based on race, color, religion, national origin, ancestry, sex, handicap, age, familial status, military status or sexual orientation.

(c) No person, firm, partnership, association or corporation shall:

(1) Induce, directly or indirectly, or attempt to induce directly or indirectly, the sale or listing for sale of residential property by representing that a change has occurred or may occur with respect to the racial, religious, sexual orientation, familial status, military status or ethnic composition of the block, neighborhood or area in which the property is located.

(2) Induce, directly or indirectly, or attempt to induce directly or indirectly, the sale or listing for sale of residential real property by representing that the presence or anticipated presence of individuals of any particular race, color, religion, national origin, ancestry, sex, handicap, age, familial status, military status or sexual orientation in the area will or may result in:

- A. The lowering of property value;
- B. A change in the racial, religious, ethnic composition, familial status, or sexual orientation of the block, neighborhood or area in which the property is located;
- C. An increase in criminal or antisocial behavior in the area; and/or
- D. A decline in the quality of the schools serving the area.

(3) Make any representation to any prospective purchaser or renter of real estate that any block, neighborhood or area has, will or might undergo a change with respect to the religious, racial, sexual orientation, familial status, or nationality composition of the block, neighborhood or area for the purpose of discouraging the purchase of residential property in a particular area.

(4) Place any sign advertising the sale or rental of real property on any City owned property without authority.

(5) Refer to race, color, religion, national origin, ancestry, sex, handicap, age, familial status, military status or sexual orientation in any advertisement offering residential property for sale or rental.

(6) Engage in, hire or conspire with any other or others to commit acts or activities of any nature, the purpose of which is to incite fear of racial, religious, sexual orientation, familial status, military status, or ethnic change among property owners.

(d) No financial institution shall discriminate, as defined herein, in the granting, extending or renewing of any financial assistance or in the fixing of rates, terms or conditions of any financial assistance, sought by any person applying for the purchase, construction, rehabilitation, repair or maintenance of any real property, or improvements thereon.

(e) No person shall conspire, assist, aid or abet, induce, incite or coerce another person to commit an act or engage in a practice that violates this section, or engage in economic or other reprisals against a person or business firm for complying with this section.

(f) As used in this Section "familial status" discrimination shall include discrimination based upon the occupancy of real property by children of a purchaser or renter of the property and/or discrimination against a renter/purchaser or potential renter/purchaser based upon the renter/purchaser or potential renter/purchaser

having children.

(g) As used in this Section, "military status" shall include the status of being a veteran, active, or reserve member of any branch of the Armed Forces of the United States. The term "Armed Forces" shall include the United States Army, Navy, Marine Corps, Air Force, Coast Guard, the reserve components thereof, the Air National Guard, and Army National Guard.

554.04. Business establishments.

It shall be an unlawful business practice for any person to deny any individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any business establishment including, but not limited to medical, dental, health care and convalescent services of any kind whatsoever on the basis, in whole or in part, solely because of race, color, religion, national origin, ancestry, sex, handicap, age, or sexual orientation.

554.05. Places of public accommodation.

(a) It shall be an unlawful practice to deny any person the full and equal enjoyment of or to impose different terms and conditions on the availability of any of the following:

(1) Use of any facility or City service on the basis, in whole or in part, solely because of race, color, religion, national origin, ancestry, sex, handicap, age, or sexual orientation.

(2) Any service, program or facility wholly or partially funded or otherwise supported by the City as a result of the fact, in whole or in part, based solely because of race, color, religion, national origin, ancestry, sex, handicap, age, or sexual orientation. This subsection shall not apply to any facility, service or program which does not receive any assistance from the City which is not provided for the public generally.

554.99. Penalty.

Any person who violates any of the provisions of this chapter is guilty of a misdemeanor in the first degree." is hereby repealed.

SECTION 2. A new section of the Chapter 554 Toledo Municipal Code is hereby enacted as follows:
"CHAPTER 554

Discrimination Prohibited

554.01 Definitions

- (a) "Business establishment" means any entity, however organized, which furnishes goods or services to the general public. An otherwise qualifying establishment which has membership requirements is considered to furnish services to the general public if its membership requirements consist only of the payment of fees or consist of requirements under which a substantial portion of the residents of this City could qualify.
- (b) "Conversion therapy" has the same meaning as sexual orientation or gender identity change efforts, which is defined in herein.
- (c) "Discriminate", "discriminates" or discrimination" means any distinction or difference in treatment of any person solely on the grounds or because of their race, religious creed, color, national origin,

ancestry, sex, handicap, age or sexual orientation.

- (d) “Employee” means any person hired or employed by any employer in consideration for direct or indirect monetary wages, compensation and/or profit or as a volunteer except those engaged in domestic service, personal service or an employee of an organized religious congregation or an employee of an organization or institution limited to members of a single religious faith.
- (e) “Employer” means any person, one or more individuals, a partnership, association or corporation hiring or employing another in consideration for direct or indirect monetary wages, compensation and/or profit or as a volunteer except as provided in Section [554.02\(b\)](#).
- (f) “Employment agency” means any person, company, partnership, association or corporation which undertakes with or without compensation to procure opportunities to work, or to procure, recruit, refer or place employees.
- (g) “Financial institution” means any person, partnership, association or corporation engaged in the business of lending money or guaranteeing loans on real property.
- (h) “Gender identity or expression” means a person’s gender-related identity, appearance, expression or behavior, whether or not that gender-related identity, appearance, expression or behavior is different from that traditionally associated with the person’s physiology or assigned sex at birth.
- (i) “Labor organization” means any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers on behalf of an employee concerning grievances, terms or conditions of employment or of mutual aid or protection in connection with employment.
- (j) “Mental health provider” means an individual who is licensed, certified or registered under the laws of the State of Ohio to provide, to an individual or a group, mental health services, including but not limited to, the assessment or improvement of mental, emotional, psychiatric, psychological, or psychosocial adjustment or functioning, regardless of whether there is a diagnosable, pre-existing disorder or disease. Mental health professionals include, but are not limited to, physicians specializing in the practice of psychiatry, psychologists, marriage and family therapies, licensed clinical social workers, professional clinical counselors, behavioral clinicians or therapists, nurses, or any other person offering such mental health services.
- (k) “Person selling real property” means any person, corporation, partnership, association or trustee who sells real property, leases or rents real property, or, who as agent for another, performs any of the functions listed herein.
- (l) “Places of public accommodation” means any inn, restaurant, eating house, barbershop, public conveyance by air, land, or water, theater, store, or other place for the sale of merchandise, or any other place for the sale of merchandise, or any other place of public accommodation or amusement where the accommodation, advantages, facilities, or privileges thereof are available to the public.
- (m) “Purchaser of real property” means any occupant, prospective occupant, lessee, prospective lessee, buyer or prospective buyer of any real property.
- (n) “Reparative therapy” has the same meaning as sexual orientation or gender identity change efforts, which is defined herein.
- (o) “Sexual orientation” means an inherent or immutable enduring emotional, romantic or sexual attraction

to other people.

- (p) “Sexual orientation or gender identity change efforts” means any practices by mental health providers that seek to change an individual’s sexual orientation. This includes efforts to change behaviors or gender expressions, or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same sex.
- (q) “Sexual orientation change efforts” does not include counseling that provides support and assistance to a person undergoing gender transition, or counseling that provides acceptance, support, and understanding of a person or facilitates a person’s coping, social support, and development, including sexual orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such counseling does not seek to change sexual orientation or gender identity.

554.02. Prohibited employment discrimination; exemptions.

(a) No employer, labor union, employment agency or any individual shall:

- (1) Discriminate against any person with regard to hire, discharge, tenure, upgrading, promotion, terms or conditions of employment or union membership solely on grounds of race, religious creed, color, national origin, ancestry, sex, handicap, age, sexual orientation, or gender identity.
- (2) Publish or cause to be published any notice or advertisement relating to the employment or membership which contains any specification or limitation as to race, religious creed, color, national origin, ancestry, sex, handicap, age, sexual orientation, or gender identity.
- (3) Require of any applicant, as a condition of employment or membership, any information concerning his or her race, religious creed, color, national origin, ancestry, sex, handicap, age, sexual orientation, or gender identity.
- (4) Aid, abet, encourage or incite the commission of any discrimination in employment practice prohibited by this chapter.

(b) Exemptions.

- (1) Any employer of less than twelve persons is not subject to the provisions of subsection (a) hereof; furthermore, members of the immediate family of an employer shall not be included in determining the number of employees.
- (2) Any religious organization or institution whose membership or service is limited to persons of a particular religious faith is not subject to the provisions of subsection (a) hereof.
- (3) Any private organization having a purely social or fraternal purpose is not subject to the provisions of subsection (a) hereof.
- (4) Any type of employment where religion, religious creed or nationality would usually and normally be considered an essential qualification of employment is not subject to the provisions of subsection (a) hereof.

554.03. Prohibited real estate discrimination.

(a) No person selling or renting real property shall, solely because of race, color, religion, national origin, ancestry, sex, handicap, age, familial status, military status, sexual orientation, or gender identity:

(1) Refuse to sell or rent property to a purchaser or renter of real property.

(2) Evict from or deny occupancy to a purchaser or renter of any real property.

(3) Make any distinction, discrimination or restriction against a purchaser or renter in the sale, rental, price, terms, conditions or privileges relating to the sale, rental, lease, occupancy of real property or in the furnishing of any facilities or services in connection therewith.

(4) Refuse to show any real property or otherwise attempt to prevent the sale, rental or lease of any real property to a purchaser or renter.

(b) No person selling or renting real property shall publish, circulate, issue or display, or cause to be published, circulated, issued or displayed, any communication, notice, advertisement or sign of any kind relating to the sale, rental or leasing of real property which indicates any preference, limitation or discrimination based on race, color, religion, national origin, ancestry, sex, handicap, age, familial status, military status, sexual orientation, or gender identity.

(c) No person, firm, partnership, association or corporation shall:

(1) Induce, directly or indirectly, or attempt to induce directly or indirectly, the sale or listing for sale of residential property by representing that a change has occurred or may occur with respect to the racial, religious, sexual orientation, gender identity, familial status, military status or ethnic composition of the block, neighborhood or area in which the property is located.

(2) Induce, directly or indirectly, or attempt to induce directly or indirectly, the sale or listing for sale of residential real property by representing that the presence or anticipated presence of individuals of any particular race, color, religion, national origin, ancestry, sex, handicap, age, familial status, military status, sexual orientation, or gender identity in the area will or may result in:

A. The lowering of property value;

B. A change in the racial, religious, ethnic composition, familial status, sexual orientation, or gender identity of the block, neighborhood or area in which the property is located;

C. An increase in criminal or antisocial behavior in the area; and/or

D. A decline in the quality of the schools serving the area.

(3) Make any representation to any prospective purchaser or renter of real estate that any block, neighborhood or area has, will or might undergo a change with respect to the religious, racial, sexual orientation, gender identity, familial status, or nationality composition of the block, neighborhood or area for the purpose of discouraging the purchase of residential property in a particular area.

(4) Place any sign advertising the sale or rental of real property on any City owned property without authority.

(5) Refer to race, color, religion, national origin, ancestry, sex, handicap, age, familial status, military status, sexual orientation, or gender identity in any advertisement offering residential property for sale or rental.

(6) Engage in, hire or conspire with any other or others to commit acts or activities of any nature, the purpose of which is to incite fear of racial, religious, sexual orientation, gender identity, familial status, military status, or ethnic change among property owners.

(d) No financial institution shall discriminate, as defined herein, in the granting, extending or renewing of any financial assistance or in the fixing of rates, terms or conditions of any financial assistance, sought by any person applying for the purchase, construction, rehabilitation, repair or maintenance of any real property, or improvements thereon.

(e) No person shall conspire, assist, aid or abet, induce, incite or coerce another person to commit an act or engage in a practice that violates this section, or engage in economic or other reprisals against a person or business firm for complying with this section.

(f) As used in this Section "familial status" discrimination shall include discrimination based upon the occupancy of real property by children of a purchaser or renter of the property and/or discrimination against a renter/purchaser or potential renter/purchaser based upon the renter/purchaser or potential renter/purchaser having children.

(g) As used in this Section, "military status" shall include the status of being a veteran, active, or reserve member of any branch of the Armed Forces of the United States. The term "Armed Forces" shall include the United States Army, Navy, Marine Corps, Air Force, Coast Guard, the reserve components thereof, the Air National Guard, and Army National Guard.

554.04. Business establishments.

It shall be an unlawful business practice for any person to deny any individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any business establishment including, but not limited to medical, dental, health care and convalescent services of any kind whatsoever on the basis, in whole or in part, solely because of race, color, religion, national origin, ancestry, sex, handicap, age, sexual orientation, or gender identity.

554.05. Places of public accommodation.

(a) It shall be an unlawful practice to deny any person the full and equal enjoyment of or to impose different terms and conditions on the availability of any of the following:

(1) Use of any facility or City service on the basis, in whole or in part, solely because of race, color, religion, national origin, ancestry, sex, handicap, age, sexual orientation, or gender identity.

(2) Any service, program or facility wholly or partially funded or otherwise supported by the City as a result of the fact, in whole or in part, based solely because of race, color, religion, national origin, ancestry, sex, handicap, age, sexual orientation, or gender identity. This subsection shall not apply to any facility, service or program which does not receive any assistance from the City which is not provided for the public generally.

554.06 Prohibition against sexual orientation or gender identity change efforts

No mental health provider shall engage in sexual orientation or gender identity change efforts with any person, without regard to whether the mental health provider is compensated or receives any form of remuneration for his or her services.

554.99. Penalty.

(a) Any person who violates any of the provision of Sections 554.02-554.05 of this chapter is guilty of a misdemeanor in the first degree.

(b) Whoever violates Section 554.06 of the chapter is guilty of a misdemeanor of the fourth degree, for the first

offense, and each day in violation shall constitute a separate offense, each with a maximum fine of \$250."

SECTION 3. That this Ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: _____: yeas _____, nays _____.

Attest: _____
Clerk of Council

President of Council

Approved: _____

Mayor

I hereby certify that the above is a true and correct copy of an Ordinance passed by Council

_____.

Attest: _____
Clerk of Council