

AN ORDINANCE RELATING TO CHANGING THE NAME OF THE HUMAN RIGHTS AND RELATIONS ADVISORY COMMISSION; AMENDING SRC 8.010, 97.010 AND 97.900.

Section 1. SRC Chapter 8 shall be known as the “Salem Human Rights Commission.”

~~Sec. 8.010. - Human Rights and Relations Advisory Commission created.~~

(b) ~~Commencing with the first vacancy to be filled on the Commission after March 9, 1998, one~~
One member shall be the youth member. The youth member shall be not younger than 15 and not older than 21 years of age at the time of appointment. The term of the youth member shall be one year, ~~except that the first appointment after March 9 may be for a term of less than one year.~~ The youth member may be reappointed for not more than one additional one-year term.

Sec. 97.010. - Definitions.

(a) The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:
Age means age 18 or older.

1 *Agent* means any person (not an employee or officer), who is an agent of a public body for
2 purposes of the Tort Claims Act, if that person meets the usual control tests with respect to the
3 manner of performance of duties, or if that person performs a function or responsibility of the City
4 on behalf of the City. A person is not an agent if he or she merely performs a service without
supervision or control for the City and not on its behalf.

5 *Commission* means the Human Rights ~~and Relations Advisory~~ Commission ~~created by~~
6 ~~ordinance~~.

7 *Domestic partnership* means a relationship between two persons who meet either of the
8 following requirements:

- 9 (1) Have registered, certified or affirmed their relationship with any appropriate, legally
10 established domestic partnership registry within any jurisdiction in the United States, or
11 with the State Public Employees Benefits Board; or
- 12 (2) Are 18 years of age or older; are each unmarried; are each other's sole domestic partner
and intend to remain so indefinitely; are not related by blood closer than would bar
marriage in the State; and are residing together, share the common necessities of life and
are responsible for each other's common welfare.

13 *Employer* means any person, wherever situated, who employs one or more employees within
14 the City, or who solicits individuals within the City to apply for employment, whether privately or
by general advertisement.

15 *Gender identity* means a person's actual or perceived sex, including a person's identity,
16 appearance, expression, or behavior with respect to actual or perceived sex, whether or not that
17 identity, appearance, expression or behavior is different from that traditionally associated with the
person's sex at birth.

18 *Person* means an individual, partnership, association, organization, corporation, board,
19 commission, or other organized and identifiable group. The term "person" includes a public body,
as that term is defined by ORS 30.260(4), other than the State or a county.

20 *Registered volunteer* means a person who donates labor or services to the City under the
21 supervision of an employee of the City and performs a function or responsibility of the City on
behalf of the City.

22 *Sexual orientation* means actual or perceived heterosexuality, homosexuality, or bisexuality.

1 *Source of income* refers to the means by which a person supports himself or herself and any
2 dependents, including, but not limited to, money and property from any occupation, profession or
3 activity, from any contract, settlement or agreement, from federal or state payments, Court-ordered
4 payments, gifts, bequests, annuities, life insurance policies, and compensation for illness or injury,
5 but excluding any money or property derived in a manner made illegal or criminal by any law,
6 statute or ordinance.

7 *Vocational school* means any person who trains and teaches individuals to engage in any trade,
8 business, or vocational pursuit.

9 (b) Any term used but not defined in this chapter shall be interpreted consistently with
10 definitions provided in ORS ch. 659A.

11 **Section 4.** Section 97.900 of the Salem Revised Code is hereby amended as follows:

12 Sec. 97.900. - Administration and enforcement.

13 (a) Nothing in this section shall be construed as barring or preventing direct prosecution of a
14 criminal violation of this chapter, or as requiring that a criminal violation be investigated or
15 heard before the Human Rights and Relations Advisory Commission, as provided in SRC
16 97.860 through 97.990.

17 (b) Claims against City.

18 (1) Any person who claims discrimination by the City in violation of this chapter may file
19 a complaint with the Commission under SRC 97.860 only after exhausting all other
20 administrative remedies provided by the City pursuant to contract, rule, or policy. If a
21 claim is filed prior to exhaustion of available City administrative remedies, the
22 Commission shall inform the person of those remedies and forward the complaint to the
appropriate city official to address it.

(2) Any claim against the City filed with the Commission by a City employee, registered
volunteer or agent shall be subject to the additional requirements of subsection (d) of this
section.

(3) If the Commission takes action under SRC 97.860(a) through (c) based on a claim
alleging discrimination against by the City and an informal resolution is not ~~thereby~~
achieved, the Commission shall refer the complaint to the City Manager for a

determination whether the complaint should be forwarded to the Bureau of Labor and Industries, which shall act as the City's enforcement agent.

(c) Claims by City employees, registered volunteers, or agents against City.

(1) Any employee, registered volunteer, or agent of the City who claims discrimination by the City in violation of this chapter may file a complaint with the Commission under SRC 97.860. Such complaint may be filed only after all applicable internal grievance processes have been followed and completed. If the complaining party files a complaint upon the completion of those internal processes, the Commission's actions shall be limited to SRC 97.860(a) through (c), subject to the conditions in subsection (c)(2) through (5) of this section.

(2) The Commission shall take no action on the complaint if the party:

(A) Has proceeded to arbitration pursuant to a collective bargaining agreement between a labor organization and the City;

(B) Has filed with the Bureau of Labor and Industries ("BOLI") a claim under ORS ch. 659A concerning the same event or set of circumstances that form the basis of the claim under this section, and BOLI has accepted jurisdiction on that claim; or

(C) Has filed a civil complaint in state or federal court against the City or any of its employees, agents or registered volunteers based on the same event or set of circumstances that form the basis of the claim under this section.

(3) The Commission shall take action on the complaint as provided in SRC 97.860(a) through (c) if the party has not taken any of the steps listed in subsection (c)(2) of this section, or if BOLI or the Court has dismissed the claim on procedural grounds.

(4) The Commission shall stay its action on the complaint if, subsequent to the filing of the complaint, the complaining party files a BOLI claim or civil complaint based on the same event or circumstances that form the basis of the claim under this section. It shall resume its action if the BOLI claim or civil complaint is dismissed on procedural grounds.

(5) The Commission shall dismiss the complaint if, subsequent to the filing of the complaint, the complaining party files a BOLI claim or civil complaint based on the same event or circumstances that form the basis of the claim under this section, and that claim proceeds to a final order, other than a dismissal on procedural grounds.

(d) Private cause of action.

1 (1) Any person who claims to be aggrieved by an unlawful discriminatory act listed below
2 shall have a cause of action in any court of competent jurisdiction.

3 (A) An unlawful employment practice based on race, religion, color, sex, marital status,
4 familial status, national origin, age, mental or physical disability, sexual orientation,
5 gender identity and source of income;

6 (B) An unlawful housing practice based on race, religion, color, sex, marital status,
7 familial status, national origin, age, mental or physical disability, sexual orientation,
8 gender identity and source of income; or

9 (C) An unlawful public accommodations practice based on race, religion, color, sex,
10 marital status, familial status, national origin, age, mental or physical disability,
11 sexual orientation, gender identity and source of income.

12 (2) A cause of action filed pursuant to this subsection (d) shall be subject to the following
13 limitations:

14 (A) The civil action must be commenced within one year after the occurrence of the
15 unlawful practice, or within 90 days after the close of the last administrative action,
16 whichever is later.

17 (B) The Court may order any injunctive relief and such other equitable relief as may
18 be appropriate, and compensatory and punitive damages.

19 (C) The Court may allow the prevailing party costs and reasonable attorney fees at trial
20 and on appeal.

21 (D) In any action under SRC 97.020, the Court may order reinstatement or hiring of
22 employees with or without back pay, subject to the time limitations provided in ORS
659A.885(1).

(e) If a complaint is filed with the Commission alleging discrimination based on a claim not
listed in subsections (e)(1)(A) through (C) of this section, then notwithstanding SRC 97.860
through 97.890, the Commission shall not refer a complaint to the City Attorney's Office.
Instead, if the Commission is unable to resolve such a complaint, the complaint shall be
referred to the appropriate state agency.

1 **Section 5. Codification.** In preparing this ordinance for publication and distribution, the
2 City Recorder shall not alter the sense, meaning, effect or substance of this ordinance, but
within such limitations, may:

- 3 (a) Renumber sections and parts of sections of the ordinance;
4 (b) Rearrange sections;
5 (c) Change reference numbers to agree with renumbered chapters, sections or other
parts;
6 (d) Delete references to repealed sections;
7 (e) Substitute the proper subsection, section or chapter, or other division numbers;
8 (f) Change capitalization and spelling for the purpose of uniformity;
9 (g) Add headings for purposes of grouping like sections together for ease of
reference; and
10 (h) Correct manifest clerical, grammatical or typographical errors.

11 **Section 6. Severability.** Each section of this ordinance, and any part thereof, is
12 severable, and if any part of this ordinance is held invalid by a court of competent
jurisdiction, the remainder of this ordinance shall remain in full force and effect.

PASSED by the City Council this _____ day of _____, 2018.

ATTEST:

City Recorder

Approved by City Attorney: _____

18 Checked by: G.Bennett