



Staff Report

File #: 19-330

Version: 1

Date: 7/8/2019

Item #: 7.2a.

TO: Mayor and City Council

THROUGH: Steve Powers, City Manager

FROM: Dan Atchison, City Attorney
and Gretchen Bennett, Human Rights/Federal Compliance Manager

SUBJECT:

Amendments to SRC Chapter 97 - Human Rights.

Ward(s): All Wards

Councilor(s): All Councilors

Neighborhood(s): All Neighborhoods

Result Area(s): Good Governance; Safe Community; Welcoming and Livable Community.

ISSUE:

Shall City Council advance Ordinance Bill No. 7-19, amending SRC chapter 97 - Human Rights, to enactment?

RECOMMENDATION:

Advance Ordinance Bill No. 7-19, amending SRC chapter 97 - Human Rights, to enactment.

SUMMARY:

Ordinance Bill No. 7-19 amends SRC chapter 97 to conform the chapter to state law by removing exceptions to gender identity discrimination and creates new requirements for places of public accommodation to use closed-captioning for public video monitor displays.

FACTS AND FINDINGS:

Ordinance Bill No. 7-19 makes the following changes:

- a) SRC 97.010 - amends the definition of "source of income" to expressly include federal rent subsidies and other state or local housing assistance, consistent with the state definition in ORS 697A.421.

- b) SRC 97.060 - requires that all toilet or locker room facilities of places of public accommodation shall be made available to persons consistent with their expressed gender, as required by Oregon Revised Statute ORS 659A.403 (1), (3), and Oregon Administrative Rule 839-005-0005 (1), (3), (13), and (16).
- c) SRC 97.065 - creates new code section requiring places of public accommodation, such as restaurants, stores, and offices, that provide television or streaming media in public area to activate closed-captioning on devices that are capable of displaying closed-captioning.
- d) SRC 97.085 -
 - Eliminates the exception to discrimination on the basis of source of income for refusing to contract with a government agency for federal "Section 8" housing assistance, and
 - Eliminates exceptions to gender identity discrimination for places of public accommodation that provide public showers and locker rooms and for employer dress codes.

Gender Identity

The City's human rights code, SRC chapter 97, was enacted in 1972, following the federal Civil Rights Act of 1964 and Oregon's adoptions of civil rights protections. Federal and Oregon civil rights laws have been amended several times since initial adoption. In 2007, Oregon adopted specific discrimination protections for lesbian, gay, bisexual and transgender (LGBT) people.

In 2002, prior to the amendments to Oregon laws to protect LGBT people, Salem amended its human rights code to expressly prohibit gender identity discrimination. As part of those protections, certain exceptions were provided. The exceptions allowed places of public accommodation that provide showers and locker rooms to require patrons to provide documentation of their gender or transitional status. Another exception allowed employers to enforce dress codes if the employer provided reasonable accommodation based on the health and safety needs of their employees.

Salem's 2002 amendments to prohibit gender identity discrimination were some of the first of their kind in the state and were put into place before Oregon expressly identified transgender status as a basis for discrimination. Since that time, state law has been amended further, and the Oregon Bureau of Labor and Industries (BOLI, the state agency that investigates and enforces certain types of discrimination) has adopted rules further clarifying gender identity discrimination. Salem's exceptions to gender identity discrimination (allowing business to require patrons to provide documentation of their gender, and allowing businesses to enforce dress codes inconsistent with an employee's gender identity) are no longer consistent with state law and BOLI rules.

Closed-Captioning

On October 22, 2018, the City Council adopted a motion for staff to research a requirement to make all television displays within public areas in places of public accommodation to use closed captioning. Broadcasters of video programming, such as television networks, and other content providers, such as YouTube or digital media (Blu-ray or DVD), are required to provide closed-captioning as part of

the programming. If a place of public accommodation utilizes that type of programming as a service to their customers, under the proposed ordinance, the place of public accommodation must turn on the closed-captioning feature for the monitor, if that option is available, in at least 50% of each area of public viewing and on any monitor or device upon request.

The requirement includes restaurants and bars that provide programming on televisions in the public areas of their businesses and offices and retail establishments that provide video programming in their lobbies, such as doctor offices and retail stores. Businesses would not be required to provide video programming. Video monitors that do not have the closed-caption feature would be exempt. The ordinance would require activation of any receiver or device in a public area upon request, even if at least 50% of the monitors or devices are already activated.

The requirement would be enforced in the same manner enforcement mechanisms in SRC chapter 97. The City would investigate the complaint, and seek corrective action from the violators. Most knowing and willful violations of the discrimination protections of SRC chapter 97 are infractions and are subject to a penalty of up to \$250.

BACKGROUND:

The City's Human Rights Commission's LGBTQ Task Force reviewed SRC chapter 97 sections regarding gender identity protections and identified potential disparities between SRC chapter 97 and Oregon law. The Commission worked with the City Attorney's office to craft amendments to make Salem's code consistent with Oregon law. The Human Rights Commission met in November, 2018 and recommended adoption of the gender identity amendments.

In public outreach, business and trade association community members suggested a percentage be determined, rather than requiring 100%, recognizing that it is difficult to watch live action sports and set captions in a location that would consistently work. This idea was discussed with the understanding that any one television receiver would have captioning on upon request. Fifty percent in every area was selected, and more can be turned on upon request. The Human Rights Commission voted in support of captioning at the 50 percent proposed.

Council action to direct staff preparations on closed-captioning was made in October 2018. Both sets of amendments to SRC chapter 97 were combined for efficiency.

Dan Atchison, City Attorney
Gretchen Bennett, Human Rights /Federal
Compliance Manager

Attachments:

1. Ordinance Bill No. 7-19.