

13-78

ADOPTION OF CODE OF ORDINANCE AMENDMENTS

AMENDMENT TO THE CODE OF ORDINANCE CHAPTER 27, NON-DISCRIMINATION ORDINANCE

At a duly scheduled and noticed meeting of the Township Board of the Charter Township of Delta, Eaton County, Michigan, held at the Delta Township Offices on October 21, 2013 at 6:00 p.m., Township Board Member, Treasurer Howard Pizzo moved to adopt the following Ordinance, which motion was seconded by Township Board Member, Clerk Mary R. Clark:

AN ORDINANCE OF THE CHARTER TOWNSHIP OF DELTA, EATON COUNTY, MICHIGAN, PROVIDING THAT THE CODE OF ORDINANCES, CHARTER TOWNSHIP OF DELTA, MICHIGAN, BE AMENDED BY ADDING A NEW CHAPTER 27 ("NON-DISCRIMINATION") TO PROHIBIT DISCRIMINATORY PRACTICES; PROVIDE DEFINITIONS; ESTABLISH PROCEDURES FOR INVESTIGATIONS AND CONCILIATION AGREEMENTS; REQUIRE TOWNSHIP CONTRACTORS TO ABIDE BY NON-DISCRIMINATION; PROVIDE PENALTIES; REPEAL ORDINANCES AND PORTIONS OF ORDINANCES INCONSISTENT WITH THIS ORDINANCE; AND PROVIDE AN EFFECTIVE DATE HEREOF.

THE TOWNSHIP BOARD OF TRUSTEES FOR THE CHARTER TOWNSHIP OF DELTA HEREBY ORDAINS:

Section 1. Addition of Chapter 27. The Code of Ordinances, Charter Township of Delta, Michigan (or Delta Charter Township Code), is hereby amended by adding a new Chapter, Chapter 27, which shall read as follows.

CHAPTER 27 – NON-DISCRIMINATION

ARTICLE I – IN GENERAL

Sec. 27-1. Intent.

It is the intent of the Township that no person be denied equal protection of the laws; nor shall any person be denied the enjoyment of his or her civil or political rights or be discriminated against because of actual or perceived race, color, religion, national origin, sex, age, height, weight, marital status, physical or mental limitation, source of income, familial status, sexual orientation, or gender identity/expression. It is also the intent of the Township to preserve the rights of religious organizations granted to religious organizations by Michigan and Federal law. This Chapter shall govern discriminatory

conduct and shall not infringe upon free speech rights granted by the First Amendment to the United States Constitution. Nothing contained in this chapter shall be construed to prohibit any affirmative action policies passed by any level of government.

Sec. 27-2. Definitions.

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. Chronological age.

Complaint Review Committee. Five (5) citizens of Delta Township responsible for reviewing complaints which shall, to the extent possible, collectively be representative of the population of Delta Township. One (1) of the five (5) individuals shall be a licensed Michigan attorney. The Complaint Review Committee shall remain an impartial decision-maker. Members shall adhere to the Delta Charter Township Ethics Policy and abstain from participation if they have a conflict of interest.

Conciliation Agreement. An agreement entered into between the Complaint Review Committee, the person alleged to have been discriminated against and the person alleged to have engaged in a prohibited practice under this chapter, whereby the persons agree to methods of resolving a complaint, terminating discrimination or reversing the effects of past discrimination.

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

Discriminate. To make a decision, offer to make a decision or refrain from making a decision based in whole or in part on the actual or perceived race, color, religion, national origin, sex, age, height, weight, marital status, physical or mental limitation, source of income, familial status, sexual orientation or gender identity/expression.

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

Employer. A person employing one or more persons.

Employment agency. A person regularly undertaking, with or without compensation, to procure, refer, recruit, or place an employee for an employer, or

to procure, refer, recruit, or place for an employer or person the opportunity to work for an employer and includes any agent of that person.

Familial status. 1 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. For purposes of this definition, "parent" includes a person who is pregnant.

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

Housing facility. Any dwelling unit or facility used for a person to regularly sleep and keep personal belongings including, but not limited to, a house, apartment, rooming house, housing cooperative, hotel, motel, tourist home, retirement home or nursing home.

Labor organization. Includes an organization of any kind, an agency or employee representation committee, group, association, or plan in which employees participate and which exists for the purpose, in whole or in part, of dealing with employees concerning grievances, labor disputes, wages, rate of pay, hours, or other terms or conditions of employment.

Marital status. The state of being married, unmarried, divorced or widowed.

Mental limitation. A limitation of mental capabilities unrelated to one's ability to safely perform the work involved in jobs or positions available to such person for hire or promotion; a limitation of mental capabilities unrelated to one's ability to acquire, rent and maintain property; or a limitation of mental capabilities unrelated to one's ability to utilize and benefit from the goods, services, activities, privileges and accommodations of a place of public accommodation. "Mental limitation" includes, but is not limited to, developmental disabilities, psychological, etc. "Mental limitation" does not include any condition caused by the current illegal use of alcohol, prescription drugs or a controlled substance.

Minority. A person who is Black or African American, Native American, or Alaskan native, Hispanic or Latino, Asian, Native Hawaiian or other Pacific Islander.

Perceived. To regard or attain awareness or understanding of something through one's perception or senses. As used in this chapter, the word 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. For example, a perceived mental limitation is one where the person who takes action perceives the person against whom such action is taken as having a mental limitation, regardless of whether the person against whom such action is taken has a mental limitation or regards himself or herself as having a mental limitation.

Person. Shall mean an individual, organization, corporation, limited liability company, partnership or other unincorporated or incorporated public or private entity of any kind.

Physical limitation. A limitation of physical capabilities unrelated to one's ability to safely perform the work involved in jobs or positions available to such person for hire or promotion; a limitation of physical capabilities unrelated to one's ability to acquire, rent and maintain property; or a limitation of mental capabilities unrelated to one's ability to utilize and benefit from the goods, services, activities, privileges and accommodations of a place of public accommodation. "Physical limitation" includes, but is not limited to, blindness or partial sightedness, deafness or hearing impairment, muteness, partial or total absence of physical member, speech impairment and motor impairment. "Physical limitation" does not include any condition caused by the current illegal use of alcohol, prescription drugs or a controlled substance.

Place of public accommodation. An educational, governmental, health, entertainment, recreational, refreshment, transportation, financial institution, accommodation, business or other facility of any kind, whose goods, services, facilities, privileges, advantages or accommodations are extended, offered, sold or otherwise made available to the general public, or which receives financial support through the solicitation of the general public or through governmental subsidy of any kind, but shall not mean any facility not open or accessible to the general public. By way of example, day care operations being conducted in a private home shall not be considered a place of public accommodation. Place of public accommodation does not include a facility operated by a religious organization or institution regardless of whether it is open or accessible to the public. Nothing in this definition shall be construed to limit any rights under the Michigan or United States Constitutions.

Religious organization or institution. A religious association, educational institution or society, which is, in whole or substantial part, owned, supported, controlled or managed by a particular religion whose purpose or character is

directed toward the propagation of that particular religion and that has the inculcation of religious values as its purpose; primarily employs persons who share its religious tenets; and primarily serves persons who share its religious tenets or, on a charitable basis, the broader community. "Religious organization or institution" includes, but is not limited to, the following: churches, mosques, synagogues and other houses of worship; any subsidiary organizations; or educational institutions affiliated with, controlled, or managed by those houses of worship or with articles of incorporation, bylaws and other documents stating an intention to inculcate its religious tenets in students.

Sexual orientation. Male or female homosexuality, heterosexuality or bisexuality, by orientation or practice, whether past or present.

Source of income. Any legal source from which a person obtains money.

Sec. 27-3. Discriminatory housing practices.

- (a) No person shall discriminate in referring, leasing, selling, renting, showing, advertising, pricing, offering, inspecting, listing, or otherwise making available any real property, including discrimination in providing information and receiving or communicating a bona fide offer on any real property.
- (b) No person shall discriminate in (1) the application, conditions, or granting of mortgages or other financing or (2) the contracting of construction, rehabilitation, maintenance, repair, or other improvement of any housing facility.
- (c) No person shall refuse to lend money for the purchase or repair of any real property because of the location in the township of such real property, except for legitimate non-discriminatory reasons related to actual risks associated with the property itself, such as being within a floodplain.
- (d) No person shall promote any sale, rental, lease, sublease, exchange, transfer, or assignment of real property by representing that demographic changes are occurring or will occur in an area with respect to any illegitimate or discriminatory characteristics.
- (e) No person shall indicate, communicate, or otherwise represent to another person that any real property or interest therein is not available for inspection, sale, rental, or lease knowing in fact it is available, including failing to make a person aware of a real property listing, refusing to permit inspection of real property, and representing that a property has been sold when in fact it has not.

Sec. 27-4. Discriminatory public accommodation practices.

- (a) 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) No person shall prohibit a breastfeeding mother from, or segregate a breastfeeding mother within, any public accommodation where she and the child would otherwise be authorized to be.
- (c) This article shall not apply to a private club or other establishment not in fact open to the public, except to the extent that the goods, services, facilities, privileges, advantages, or accommodations of the private club or establishment are made available to the customers or patrons of another establishment that is a place of public accommodation, or if it is licensed, chartered, or certified by the state or any of its political subdivisions.

Sec. 27-5. Discriminatory employment practices.

- (a) It is unlawful for an employer to:
 - (1) Limit, segregate, classify, fail or refuse to hire, to recruit, to discharge, or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment provided under Michigan law, including a benefit plan or system because of actual or perceived race, color, religion, national origin, sex, age, height, weight, marital status, physical or mental limitation, source of income, familial status, sexual orientation or gender identity/expression, or because of the use by an individual of adaptive devices or aids.
 - (2) Fail or refuse to hire, recruit, or promote an individual on the basis of any physical or mental limitations that are not directly related to the requirements of the specific job.
 - (3) Discharge or take other discriminatory action against an individual on the basis of any physical or mental limitations that are not directly related to the requirements of the specific job.
 - (4) Fail or refuse to hire, recruit, or promote an individual when adaptive devices or aids may be utilized thereby enabling that individual to perform the specific requirements of the job.

- (5) Discharge or take other discriminatory action against an individual when adaptive devices or aids may be utilized thereby enabling that individual to perform the specific requirements of the job.
 - (6) Discriminate against a person with respect to hire, tenure, terms, conditions, or privileges of employment because of a misdemeanor arrest, detention, or disposition where a conviction did not result. This section does not apply to felonies or information relative to a felony charge before conviction or dismissal.
 - (7) Make, keep or use an oral inquiry, form of application, or record that elicits or attempts to elicit information concerning the religion, race, color, national origin, age, sex, height, weight, marital status, sexual orientation, gender identity/expression, or because of the use by an individual of adaptive devices or aids except where applicable under federal and state law, or local ordinance.
- (b) An employer, labor organization, or employment agency shall not print, circulate, post, mail, or otherwise cause to be published a statement, advertisement, notice, or sign relating to employment by the employer, or relating to membership in or a classification or referral for employment by the labor organization, or relating to a classification or referral for employment by the employment agency, which indicates a preference, limitation, specification, or discrimination, based on actual or perceived race, color, religion, national origin, sex, age, height, weight, marital status, physical or mental limitation, source of income, familial status, sexual orientation, gender identity or expression, or the need for any reasonable accommodations, including but not limited to the use by an individual of adaptive devices or aids.
- (c) A person subject to this section may apply to the committee for an exemption on the basis that actual or perceived race, color, religion, national origin, age, sex, height, weight, marital status, physical or mental limitation, source of income, familial status, sexual orientation or gender identity/expression, is a bona fide occupational qualification reasonably necessary to the normal operation of the business or enterprise. Upon sufficient showing, the committee may grant an exemption to this section. An employer who does not obtain an exemption for such bona fide occupational qualification shall have the burden of establishing that the qualification is reasonably necessary to the normal operation of the business.

- (d) This section shall not apply to the employment of an individual by his/her parent, spouse, or child.
- (e) Nothing in this Section shall operate to violate Article I, Section 25 of the Michigan Constitution.

Sec. 27-6. Other prohibited practices.

- (a) No person shall adopt, enforce or employ any policy or requirement, publish, post or broadcast any advertisement, sign or notice which discriminates or indicates discrimination in providing housing, employment or public accommodations.
- (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 union, employment agency or any other intermediary shall discriminate in making referrals, listings or providing information with regard to housing, employment or public accommodations. 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 knowingly conspire with, assist, coerce or request another person to discriminate in any manner prohibited by this chapter.
- (f) No person shall provide false or misleading information to any authorized person investigating a complaint regarding a violation or alleged violation of this chapter, or sign a complaint for a violation of this chapter based upon false or substantially misleading information.

Sec. 27-7. Information and investigation.

- (a) No person shall provide false information to any authorized employee investigating a complaint regarding a violation of this chapter.
- (b) For an investigation, the Complaint Review Committee may request a person to produce books, papers, records or other documents which may be relevant to a

violation or alleged violation of this chapter. If said person does not comply with such request, the Township attorney may apply to the Eaton County Circuit Court for an order requiring production of said materials.

Sec. 27-8. Conciliation agreements.

In cases involving alleged violations of this chapter, the Complaint Review Committee may enter into agreements whereby persons agree to methods of terminating discrimination or to reverse the effects of past discrimination. Violations of such agreements shall be violations of this chapter.

Sec. 27-9. Injunctions.

The Township 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 conciliation agreement.

Sec. 27-10. Discriminatory effects.

No person shall adopt, enforce or employ any policy or requirement which has the effect of creating unequal opportunities according to actual or perceived race, color, religion, national origin, sex, age, height, weight, source of income, familial status, sexual orientation, marital status, physical or mental limitation, or gender identity expression for a person to obtain housing, employment or public accommodation, except for a bona fide business necessity. Such a 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.

Sec. 27-11. Exceptions.

Notwithstanding anything contained in this chapter, the following practices shall not be violations of this chapter.

- (a) For a religious organization or institution to (i) restrict access or use of any of its facilities it operates; (ii) to restrict employment opportunities for officers, religious instructors, staff and clergy; or (iii) restrict membership or benefits of membership.
- (b) For the owner of an owner-occupied single-family or two-family dwelling, or a housing facility or public accommodation facility, respectively, devoted entirely to the housing and accommodation of individuals of one sex, to restrict occupancy and use on the basis of sex.
- (c) To limit occupancy in a housing project or to provide public accommodations or employment privileges or assistance to persons of low income, over 55 years of

age or who are handicapped.

- (d) To engage in a bona fide effort to establish an affirmative action program to improve opportunities in employment for minorities and women.
- (e) To discriminate based on actual or perceived race, color, religion, national origin, sex, age, height, weight, marital status, physical or mental limitation, source of income, familial status, sexual orientation, or gender identity/expression when such discrimination is permitted or required by Michigan, Federal, or local law under principles of preemption.
- (f) To refuse to enter a contract with an un-emancipated minor.
- (g) To refuse to admit to a place of public accommodation serving alcoholic beverages a person under the legal age for purchasing alcoholic beverages.
- (h) To refuse to admit to a place persons under eighteen (18) years of age to a business providing entertainment or selling literature which the operator of said business deems unsuitable for minors.
- (i) For an educational institution to limit the use of its facilities to those affiliated with such institution.
- (j) To provide discounts on products or service to students, minors and senior citizens, or members of an organization.
- (k) To discriminate in any arrangement for the sharing of a dwelling unit.
- (l) To restrict use of lavatories and locker room facilities on the basis of sex.
- (m) 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.
- (n) To restrict participation in an instructional program, athletic event or on an athletic team on the basis of age or sex.
- (o) Placing reasonable restrictions on breast feeding in an area open to the general public.

Sec. 27-12. Nondiscrimination by Township contractors

- (a) A written contract to which the township, a political subdivision, or an agency thereof, is a party shall contain a covenant by the contractor and his/her subcontractors not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment,

including a benefit plan or system or a matter directly or indirectly related to employment, because of actual or perceived race, color, religion, national origin, age, sex, height, weight, marital status, physical or mental limitation, source of income, familial status, sexual orientation, gender identity or expression, or use by an individual of adaptive devices or aids. Breach of this covenant may be regarded as a material breach of the contract.

- (b) This section is also applicable to labor organizations, employment agencies, apprenticeships, and job training programs. In addition, a labor organization shall not discriminate in its membership practices nor fail to fairly represent its membership in a grievance process because of actual or perceived religion, race, color, national origin, age, sex, height, weight, marital status, physical or mental limitation, source of income, familial status, sexual orientation, gender identity/expression, or use by an individual of adaptive devices or aids.

Sec. 27-13. Complaints.

- (a) Any person claiming to be discriminated against in violation of this ordinance may file with the Complaint Review Committee a complaint, in writing, setting forth with reasonable specificity the person or persons alleged to have violated this chapter, the specific nature of the violation and the date(s) of the alleged violation. A person filing a complaint must do so within 180 days of the incident forming the basis of the complaint.
- (b) To the extent permitted by law, all written complaints of discrimination in employment, public accommodation, public services, and housing received by the Complaint Review Committee shall be kept confidential.
- (c) The Complaint Review Committee shall:
 - (1) Be responsible for receipt, recordation, investigation, mediation, conciliation, recommendation, and/or forwarded to the Township Manager for referral to the Township Attorney;
 - (2) Ensure there are no undue burdens placed on a Claimant, which might discourage filing of a discrimination complaint.
 - (3) Commence and complete the complaint investigation, mediation/conciliation, and recommendation process in a timely manner;
 - (4) Hold any complaint investigation, mediation/conciliation and recommendation in abeyance pending the outcome of any state or federal investigation being conducted or private cause of action arising out of the same operative facts relating to the matter or incident forming the basis of the

complaint; and

- (5) Refer a complaint it deems valid and sufficiently egregious to the Township Manager for referral to the Township Attorney for review and additional action.

Sec. 27-14. Investigation and hearing.

- (a) During an investigation, the Complaint Review Committee may request the appearance of witnesses and the production of books, papers, records or other documents that may be relevant to a violation or alleged violation of this chapter.
- (b) If the Complaint Review Committee determines that the complaint and preliminary evidence gathered indicates a prima facie violation of any provision in this chapter, the Complaint Review Committee shall conduct a hearing within 90 days after completion of its preliminary investigation. The person alleged to have committed a violation (the “Respondent”) and the Claimant shall be sent by regular mail at least 14 days advance, notice of the scheduled date and time of the hearing and a request for each to appear. At the hearing, testimony will be taken. All testimony shall be on the record, under oath and either recorded or transcribed. Both Claimant and Respondent shall be allowed to testify, present evidence, bring witnesses to testify, and to cross-examine all witnesses at the hearing. Technical rules of evidence shall not apply.
- (c) A failure of either the Claimant or the Respondent to cooperate with the Complaint Review Committee may result in an adverse determination for that person at the hearing.

Sec. 27-15. Findings and recommendations.

- (a) The Complaint Review Committee shall make findings of fact based on the testimony and evidence introduced at the hearing and shall order such relief as the Complaint Review Committee deems appropriate. The findings and recommendations shall be served by regular mail on the Claimant and Respondent. The Claimant and Respondent shall have 30 days from the date the findings and recommendations are mailed to either (1) comply with the findings and recommendations, unless a different time frame is provided by the Complaint Review Committee for compliance, or (2) object to the recommendation to the township board.

Section 27-16. Available recommendations.

Complaint Review Committee recommendations include:

- (a) Ceasing the illegal conduct cited in the complaint and taking steps to alleviate the effect of such illegal conduct;
- (b) Providing that the Respondent apologize to the Claimant;
- (c) Closing the matter based upon a mediation/conciliation agreement of the Claimant and Respondent;
- (d) Admitting the Claimant to a place of public accommodation or extending full and equal use and enjoyment of said place of public accommodation;
- (e) Paying some or all of the Claimant's costs, incurred at any stage of review;
- (f) Dismissing the complaint;
- (g) Imposing costs against a Claimant for a frivolously filed claim; and
- (h) Imposing penalties pursuant to Section 27-17.

Sec. 27-17. Penalties.

- (a) A violation of a prohibited act in this chapter is designated a municipal civil infraction, is not a crime and shall not be punishable by imprisonment.
- (b) Schedule of civil fines. The violation shall be according to the schedule as adopted by resolution of the township board. Such resolution shall be on file in the office of the township clerk.
- (c) Continuing violation.
 - (1) For an offense that is a single and discrete occurrence, a single violation shall accrue. Subsequent single and discrete occurrences shall result in additional violations according to the above schedule.
 - (2) For offenses that are continuing in nature, rather than single and discrete, the first violation shall accrue with the first day of the occurrence, and subsequent violations shall accrue for each additional day of that occurrence (for example, an impermissible hiring practice that continues each day on an ongoing basis).
 - (3) For continuing violations under subsection (c)(2), the day of the first

occurrence shall be measured from the day of service of the Township Attorney's complaint.

Section 2. Severability. If a court of competent jurisdiction declares any provision of this Ordinance, or a statutory provision referred to or adopted by reference herein, to be unenforceable, in whole or in part, such declaration shall only affect the provision held to be unenforceable and shall not affect any other part or provision. Provided, however, that if a court of competent jurisdiction declares a penalty provision to exceed the authority of the Township, the penalty shall be construed as the maximum penalty that is determined by the court to be within the authority of the Township to impose.

Section 3. Repeal. All ordinances or parts of ordinances in conflict or inconsistent with the provisions of this Ordinance are hereby repealed; provided that any violation charged before the effective date of this Ordinance under an ordinance provision repealed by this Ordinance shall continue under the ordinance provision then in effect.

Section 4. Effective Date. This ordinance shall take effect immediately after final publication.

CHARTER TOWNSHIP OF DELTA
MARY CLARK, TOWNSHIP CLERK