

Chapter 13.5

HUMAN RIGHTS*

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***Editor's note**—Ord. No. 357-92, adopted May 11, 1992, enacted new provisions, relative to human rights, to be included as chapter 13-A; such provisions have been codified as chapter 13.5 at the discretion of the editor.

Cross reference—Administration, Ch 2; offenses, miscellaneous provisions, Ch 17.

ARTICLE I. IN GENERAL

Secs. 13.5-1 – 13.5-20. Reserved.

ARTICLE II. DISCRIMINATION BASED ON SEXUAL ORIENTATION

DIVISION 1. GENERALLY

Sec. 13.5-21. Legislative findings and statement of policy.

The council finds that:

- (1) The population of the city consists of people of every sexual orientation, some of whom are discriminated against in employment opportunities, housing, access to public accommodations and in the extension of financial credit;
- (2) Neither the federal government, nor the state, nor the city currently has any law prohibiting discrimination based on sexual orientation;

- (3) There has been a disturbing increase in the number of violent incidents within the city in which individuals have been attacked because of their sexual orientation; and
- (4) The lack of legal protection for individuals discourages them from publicizing acts of discrimination out of fear of reprisal.

Therefore, in order to protect the public health, safety and welfare, it is declared to be the policy of this city to prevent discrimination in employment, housing, access to public accommodations or in the extension of credit, on account of sexual orientation.
(Ord. No. 357-92, 5-11-92)

Sec. 13.5-22. Definitions.

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings:

Discriminate. “Discriminate” includes, without limitation, segregate or separate.

Employee. “Employee” does not include any individual employed by his parents, spouse or child.

Employer. “Employer” includes any person in this city employing any number of employees, whatever the place of employment of such employees, and any person outside this city employing any number of employees whose usual place of employment is in this city; any person acting in the interest of any employer, directly or indirectly; and labor organizations, whether or not organized on a religious, fraternal or sectarian basis, with respect to their employment of employees; but does not include a religious or fraternal corporation or association, not organized for private profit and in fact not conducted for private profit, with respect to employment of its members of the same religion, sect or fraternity.

Employment agency. “Employment agency” includes any person undertaking with or without compensation to procure opportunities to work, or to procure, recruit, refer or place employees; it includes, without limitation, placement services, training schools and centers, and labor organizations, to the extent that they act as employee referral sources; and it includes any agent of such person.

Housing accommodation. “Housing accommodation” includes any building or structure or portion thereof, or any parcel of land developed for occupancy, for residential purposes excepting:

- (1) The rental of a one-family unit of a two-family dwelling, one (1) unit of which is occupied by the owner;

- (2) The rental of not more than (4) rooms of a one-family dwelling which is occupied by the owner;
- (3) The rental of any dwelling owned, controlled or operated for other than a commercial purpose by a religious corporation to its membership unless such membership is restricted on account of sexual orientation.

Person. “Person” includes one (1) or more individuals, partnerships, associations, organizations, corporations, municipal corporations, legal representatives, trustees, trustees in bankruptcy, receivers and other legal representatives, and includes the city and all agencies thereof.

Place of public accommodation. “Place of public accommodation” means any establishment operated by a public or private entity, that in fact caters to, or offers its goods, facilities or services to, or solicits or accepts patronage from, the general public, regardless of where goods or services are provided, a facility, operated by a public or private entity, whose operations fall within at least one of the following categories, regardless of where goods or services are provided. This definition shall be liberally construed to accomplish the purpose of the ordinance. The ordinance shall apply to the following establishments which are included for the purpose of illustration only and not by way of limitation.:

- a. An inn, hotel, motel or other place of lodging, whether conducted for the entertainment of accommodation of transient guests or those seeking health, recreation or rest;
- b. A restaurant, eating house, bar, tavern, buffet, saloon, soda fountain, ice cream parlor or other establishment serving or selling food or drink;
- c. A motion picture house, theater, concert hall, stadium, roof garden, airdrome or other place of exhibition or entertainment;
- d. An auditorium, convention center, lecture hall or other place of public gathering;
- e. A bakery, grocery store, clothing store, hardware store, shopping center, garage, gasoline station or other sales or rental establishment;
- f. A Laundromat, dry cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, dispensary, clinic bathhouse or other service establishment;
- g. All public conveyances operated on land or water or in the air as well as a terminal, depot or other station used for specified public transportation;

- h. A museum, library, gallery or other place of public display or collection;
- i. A park, zoo, amusement park, race course, skating rink, fair, bowling alley, golf course, golf club, country club, gymnasium, health spa, shooting gallery, billiard or pool parlor, swimming pool, seashore accommodation or boardwalk or other place of recreation, exercise or health;
- j. A nursery, elementary, secondary, undergraduate or postgraduate school or other place of education;
- k. A day care center, senior citizen center, homeless shelter, food bank, adoption agency or other social service center establishment;
- l. Public elevators of buildings occupied by 2 or more tenants or by the owner and one or more tenants;
- m. A municipal building, courthouse, town city hall or other establishment of the State or a local government; and

When a place of public accommodation is located in a private residence, the portion of the residence used exclusively as a residence is not covered by this subchapter, but that portion used exclusively in the operation of the place of public accommodation or that portion used both for the place of public accommodation and for the residential purposes is covered by this subchapter. The covered portion of the residence extends to those elements used to enter the place of public accommodation, and those exterior and interior portions of the residence available to or used by customers or clients, including restrooms.

Real estate broker and salesman. “Real estate broker” and “real estate salesman” have the same definitions as are given respectively in Title 32, Section 4001, subsections 2 and 3 of the Maine Revised Statutes Annotated; but include all persons meeting those definitions, whether or not they are licensed or required to be licensed.

Sexual orientation. “Sexual orientation” means having an orientation for, or being identified as having an orientation for, heterosexuality, homosexuality or bisexuality.
(Ord. No. 357-92, 5-11-92)

DIVISION 2. FAIR EMPLOYMENT

Sec. 13.5-23. Unlawful employment discrimination.

It shall be unlawful employment discrimination, in violation of this article, except where based on a bona fide occupational qualification:

- (1) For any employer to fail or refuse to hire or otherwise discriminate against any applicant for employment because of sexual orientation or because of such reason to discharge an employee or discriminate with respect to hire, tenure, promotion, transfer, compensation, terms, conditions or privileges of employment, or any other matter directly or indirectly related to employment, or in recruiting of individuals for employment or in hiring them, to utilize any employment agency which such employer knows, or has reasonable cause to know, discriminates against individuals because of their sexual orientation.
- (2) For any employment agency to fail or refuse to classify properly or refer for employment or otherwise discriminate against any individual because of sexual orientation, or to comply with an employer's request for the referral of job applicants, if such request indicates whether directly or indirectly that such employer will not afford full an equal employment opportunities to individuals regardless of their sexual orientation.
- (3) For any labor organization to exclude from apprenticeship of membership, or to deny full and equal membership rights, to any applicant for membership, because of sexual orientation or because of such reason to deny a member full and equal membership rights, expel from membership, penalize or otherwise discriminate in any manner with respect to hire, tenure, promotion, transfer, compensation, terms, conditions or privileges of employment, representation, grievances or any other matter directly or indirectly related to membership or employment, whether or not authorized or required by the constitution or bylaws of such labor organization or by a collective labor agreement or other contract, or to fail or refuse to classify properly or refer for employment, or otherwise to discriminate against any member because of such sexual orientation, or to cause or attempt to cause an employer to discriminate against an individual in violation of this section.
- (4) For any employer or employment agency or labor organization, prior to employment or admission to membership of any individual, to:
 - a. Elicit or attempt to elicit any information directly or indirectly pertaining to sexual orientation except where some privileged information is necessary for an employment agency or labor organization to make a suitable job referral;
 - b. Make or keep a record of sexual orientation;
 - c. Use any form of application for employment or personnel or membership blank containing questions or entries directly or indirectly pertaining to sexual orientation;
 - d. Print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specification or discrimination based upon sexual orientation;

e. Establish, announce or follow a policy of denying or limiting, through a quota system or otherwise, employment or membership opportunities of any group because of sexual orientation; or

(5) For an employer or employment agency or labor organization to discriminate in any manner against any individual because they have opposed any practice which would be a violation of this article, or because they have made a charge, testified or assisted in any manner in any investigation, proceeding or hearing under this article.

(Ord. No. 357-92, 5-11-92)

Sec. 13.5-24. Not unlawful employment discrimination.

It shall not be unlawful employment discrimination:

(1) *Records.* After employment or admission to membership, to make a record of such features of an individual as are needed in good faith for the purpose of identifying them, provided such record is intended and used in good faith solely for such identification, and not for the purpose of discrimination in violation of this article.

(2) *Required records.* To record any data required by law, or by the files and regulations of any state of federal agency, provided such records are kept in good faith for the purpose of complying with law, and are not used for the purpose of discrimination in violation of this article.

(Ord. No. 357-92, 5-11-92)

DIVISION 3. FAIR HOUSING

Sec. 13.5-25. Unlawful housing discrimination.

It shall be unlawful housing discrimination, in violation of this article:

(1) For any owner, lessee, sublessee, managing agent or other person having the right to sell, rent, lease or manage a housing accommodation, or any agent of these to make or cause to be made any written or oral inquiry concerning the sexual orientation of any prospective purchaser, occupant or tenant of such housing accommodation; or to refuse to show or refuse to sell, rent, lease, let or otherwise deny to or withhold from any individual such housing accommodation because of sexual orientation of such individual; or to issue any advertisement relating to the sale, rental or lease of such housing accommodation which indicates any preference, limitation, specification or discrimination based upon sexual orientation; or to discriminate against any individual because of sexual orientation in the price, terms, conditions or privileges of the sale, rental or lease If any such housing accommodations or

in the furnishing of facilities or services in connection therewith, or to evict or attempt to evict any tenant of any housing accommodation because of sexual orientation;

- (2) For any real estate broker or real estate sales person, or agent of one (1) of them, to fail or refuse to show any applicant for a housing accommodation any such accommodation listed for sale, lease or rental. Because of sexual orientation of such applicant or of any intended occupant of such accommodation, or to misrepresent for the purpose of discriminating on account of sexual orientation of such applicant or intended occupant the availability or asking price of a housing accommodation listed for sale, lease or rental; or for such a reason to fail to communicate to the person having the right to sell or lease such housing accommodation any offer for the same made by any applicant thereof; or in any other manner to discriminate against any applicant for housing because of sexual orientation of such applicant or of any intended occupant of the housing accommodation, or to make or cause to be made any written or oral inquiry or record concerning the sexual orientation of any such applicant or intended occupant, or to accept for listing any housing accommodation when the person having the right to sell or lease the same has directly or indirectly indicated an intention of discriminating among prospective tenants or purchasers on the ground of their sexual orientation, or when he knows or has reason to know that the person having the right to sell or lease such housing accommodation has made a practice of such discrimination since July 1, 1972; or
- (3) For any person to whom application is made for a loan or other form of financial assistance for the acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation, whether secured or unsecured, or agent of such person, to make or cause to be made any oral or written inquiry concerning the sexual orientation of any individual seeking such financial assistance, or of existing or prospective occupants or tenants of such housing accommodations; or to discriminate in the granting of such financial assistance, or in the terms, conditions or privileges relating to the obtaining or use of any such financial assistance, against any applicant because of the sexual orientation of such applicant or of the existing or prospective occupants or tenants.

(Ord. No. 357-92, 5-11-92)

Sec. 13.5-26. Application.

Nothing in this article shall be construed in any manner to prohibit or limit the exercise of the privilege of every person and the agent of any person having the right to sell, rent lease or manage a housing accommodation to set up and enforce specifications in the selling, renting, leasing or letting thereof or in the furnishings of facilities or services in connection therewith which are not based on the sexual orientation of any prospective or actual purchaser, lessee, tenant or occupant thereof. Nothing in this article

contained shall be construed in any manner to prohibit or limit the exercise of the privilege of every person and the agent of any person making loans for or offering financial assistance in the acquisition, construction, rehabilitation, repair or maintenance of housing accommodations to set standards and preferences, terms, conditions, limitations or specifications for the granting of such loans or financial assistance which are not based on the sexual orientation of any existing or prospective owner, lessee, tenant or occupant of such housing accommodation.

(Ord. No. 357-92, 5-11-92)

DIVISION 4. PUBLIC ACCOMMODATIONS

Sec. 13.5-27. Unlawful public accommodations.

It shall be unlawful public accommodations discrimination, in violation of this article:

- (1) For any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, to directly or indirectly refuse, withhold from or deny to any person, on account of sexual orientation, any of the accommodations, advantages, facilities or privileges of such place of public accommodation, or for such reason in any manner to discriminate against any person in the price, terms or conditions upon which access to such accommodations, advantages, facilities and privileges may depend; or
- (2) For any person to directly or indirectly publish, circulate, issue, display, post or mail any written, printed, painted or broadcast communication, notice or advertisement, to the effect that any of the accommodations, advantages, facilities and privileges of any place of public accommodation shall be refused, withheld from or denied to any person on account of sexual orientation, or that the patronage or custom thereof of any person belonging to or purporting to be of any particular sexual orientation is unwelcome, objectionable or not acceptable, desired or solicited, or that the clientele thereof is restricted to members of particular sexual orientation. The production of any such written, printed, painted or broadcast communication, notice or advertisement, purporting to relate to any such place, shall be presumptive evidence in any action that the same was authorized by its owner, manager or proprietor.

(Ord. No. 357-92, 5-11-92)

DIVISION 5. FAIR CREDIT EXTENSION

Sec. 13.5-28. Unlawful credit extension discrimination.

It shall be unlawful credit discrimination for any creditor to refuse the extension of credit to any person solely on the basis of sexual orientation in any credit transaction. It shall not be unlawful credit discrimination to comply with the terms and conditions of any bona fide group credit life, accident and health insurance plan, for a financial institution extending credit to a married person to require both the husband and the wife to sign a note and a mortgage and to deny credit to persons under the age of eighteen (18) or to consider a person's age in determining the terms upon which credit will be extended.

(Ord. No. 357-92, 5-11-92)

Sec. 13.5-29. Definitions.

As used in this division, unless the context otherwise requires, the following words shall have the following meanings:

Application for credit. "Application for credit" means any communication, oral or written, by a person to a creditor requesting an extension of credit to that person or to any other person, and includes any procedure involving the renewal or alteration of credit privileges or the changing of the name of the person to whom credit is extended.

Credit. "Credit" means the right granted by a creditor to a person to defer payment of debt or to incur debt and defer its payment, or purchase property or services and defer payment therefore.

Credit sale. "Credit sale" means any transaction with respect to which credit is granted or arranged by the seller. The terms includes any contract in the form of a bailment of lease if the bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the property and services involved and it is agreed that the bailee or lessee will become the owner of the property upon full compliance with his obligations under the contract.

Credit transaction. "Credit transaction" means any invitation to apply for credit, application for credit, extension of credit or credit sale.

Creditor. "Creditor" means any person who regularly extends or arranges for the extension of credit for which the payment of a finance charge or interest is required, whether in connection with loans, sale of property or services or otherwise.

Extension of credit. "Extension of credit" means any acts incident to the evaluation of an application for credit and the granting of credit.

Invitation to apply for credit. “Invitation to apply for credit” means any communication, oral or written, by a creditor which encourages or prompts an application for credit.

(Ord. No. 357-92, 5-11-92)

DIVISION 6. PROCEDURE IN SUPERIOR COURT

Sec. 13.5-30. Enforcement by civil action.

A violation of this article shall be a civil infraction and shall be enforceable in the Maine Superior Court in a civil action. Within the time limited, a person who has been subject to unlawful discrimination may file a civil action in the superior court against the person or persons who committed the unlawful discrimination.

(Ord. No. 357-92, 5-11-92)

Sec. 13.5-31. Burden of proof.

In any civil action under this article, the burden shall be on the person seeking relief to prove, by a fair preponderance of the evidence, that the alleged unlawful discrimination occurred.

(Ord. No. 357-92, 5-11-92)

Sec. 13.5-32. Actions filed under this article.

In any action filed under this article by any person:

- (1) Where any person who has been the subject of alleged unlawful housing discrimination has not acquired substitute housing, temporary injunctions against the sale or rental to others of the housing accommodations as to which the violation allegedly occurred, or against the sale or rental of a single housing accommodation substantially identical thereto and controlled by the alleged violator shall be liberally granted in the interests of furthering the purposes of this article, when it appears probable that the plaintiff will succeed upon final disposition of the case.
- (2) If the court finds that unlawful discrimination occurred, its judgment shall specify an appropriate remedy or remedies therefor. Such remedies may include, but are not limited to:
 - a. An order to cease and desist from the unlawful practices specified in the order;
 - b. An order to employ or reinstate a victim of unlawful employment discrimination, with or without back pay;
 - c. An order to accept or reinstate such a person in a union;

- d. An order to rent or sell a specified housing accommodation, or one (1) substantially identical thereto if controlled by the respondent, to a victim of unlawful housing discrimination;
- e. An order requiring the disclosure of the locations and descriptions of all housing accommodations which the violator has the right to sell, rent, lease or manage;
- f. An order to pay in cases of unlawful price discrimination the victim thereof three (3) times the amount of any excessive price demanded and paid by reason of such unlawful discrimination; and
- g. An order to pay to the complainant civil penal damages not in excess of one thousand dollars (\$1,000.00) in the case of the first order under this article against the respondent, not in excess of two thousand dollars (\$2,000.00) in the case of a second such order against the respondent, and not in excess of three thousand dollars (\$3,000.00) in the case of a third or subsequent such order against the respondent; and

(3) The action shall be commenced not more than two (2) years after the act of unlawful discrimination complained of.

(Ord. No. 357-92, 5-11-92)

Sec. 13.5-33. Attorneys' fees and costs.

In any civil action under this article, the court, in its discretion, may allow the prevailing party reasonable attorneys' fees and costs.

(Ord. No. 357-92, 5-11-92)

DIVISION 7. EXCEPTIONS

Sec. 13.5-34. Exceptions.

In addition to the other exceptions and exemptions provided in this article, this article does not:

- (1) Require the teaching of any particular subject in the public schools;
- (2) Apply to a religious corporation, association or organization; or
- (3) Require any form of affirmative action based on sexual orientation.

(Ord. No. 357-92, 5-11-92)