

ORDINANCE NO. 1102

AN ORDINANCE OF THE CITY OF KETCHUM, BLAINE COUNTY, IDAHO, ENACTING A NEW SECTION TO THE KETCHUM MUNICIPAL CODE TITLE 9.24, TO PROHIBIT DISCRIMINATORY ACTS IN HOUSING, EMPLOYMENT AND PUBLIC ACCOMMODATIONS BASED UPON SEXUAL ORIENTATION AND GENDER IDENTITY/EXPRESSION; ESTABLISHING A PURPOSE AND POLICY DECLARATION; ESTABLISHING DEFINITIONS; ENUMERATING PROHIBITED DISCRIMINATORY ACTS; PROVIDING EXCEPTIONS; ESTABLISHING A HUMAN RIGHTS BOARD; PROVIDING DUE PROCESS INCLUDING MEDIATION, INVESTIGATION, AND HEARING; PROVIDING A PENALTY PROVISION; CLARIFYING THAT THIS ORDINANCE DOES NOT CREATE A PRIVATE RIGHT OF ACTION; PROVIDING A SAVINGS AND SEVERABILITY CLAUSE, APPROVING A SUMMARY OF THE ORDINANCE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, it is the policy and intent of the City of Ketchum that no person be denied equal protection of the laws; nor shall any person be discriminated against because of his or her sexual orientation or gender identity/expression; and

WHEREAS, state and federal laws prohibit discrimination in the areas of employment, public accommodation, and housing on the basis of race, color, age, sex, national origin, and/or disability, but there are no such protections against discrimination on the basis of sexual orientation or gender identity/expression; and

WHEREAS, nothing contained herein should be construed as supporting or advocating any particular doctrine, position, point of view, or religious view. To the contrary, it is the intention of this ordinance that all persons are treated fairly and equally in the City of Ketchum.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF KETCHUM:

**Section 1:** That Title 9.24, Ketchum City Code, entitled "DISCRIMINATION PROHIBITED" be and hereby is enacted as follows:

**9.24.010: PURPOSE AND DECLARATION OF POLICY**

- A. In order to ensure that all persons, regardless of sexual orientation, gender identity/expression enjoy the full benefits of citizenship and are afforded equal opportunities for employment, housing, commercial property, and the use of public accommodations, the City of Ketchum has determined that discrimination on the basis of sexual orientation and gender identity/expression must be addressed, and appropriate legislation be enacted.
- B. It is hereby declared that every individual in the City of Ketchum has the right to work and earn wages through gainful employment, has the right to seek housing, and has the right to enjoy public accommodation and hospitality.
- C. It is hereby declared to be the public policy of the city of Ketchum to foster the employment of all individuals in accordance with their abilities. Every individual has the right to work and earn wages through gainful employment. Discriminatory employment practices are detrimental because they impede the social and economic progress of a city by preventing all of the city's citizens from contributing to the cultural, spiritual, social, and commercial life of the community. The contributions of all the citizens of the City of Ketchum are essential to the City's growth, vitality, and prosperity.
- D. It is the intention of this section that all persons be treated fairly and equally, and it is the express intent of this section to guarantee fair and equal treatment under the law to all people of the city of Ketchum. The

denial of fair and equal treatment under the law due to sexual orientation or gender identity/expression is detrimental to the health, safety, and welfare of the city's citizens, and damages a city's economic well-being.

- D. This section shall be deemed an exercise of the police power of the city of Ketchum for the protection of the public welfare, prosperity, health and peace of the city of Ketchum, its residents and the community.
- E. The prohibitions against discriminatory acts as provided for in this section are intended to supplement state and federal civil rights law prohibiting discrimination in the areas of employment, public accommodations, and housing. For complaints alleging discrimination on a basis proscribed under state or federal law (e.g., race, color, religious creed, ancestry, age, sex, national origin, and/or disability) the complainant is advised of their right to file their complaint alleging a violation of Idaho Code section 18-7301 et. seq., and/or his or her right to file a complaint with the Idaho Commission on Human Rights and/or the Federal Equal Employment Opportunity Commission pursuant to Title VII of the Civil Rights Act of 1964 as amended, the Fair Housing Act of 1968 as amended, or the Americans with Disabilities Act of 1990 as amended.
- F. No power or duty granted hereunder to the human relations review board is intended to exceed nor shall it be construed as exceeding those powers and duties granted to the Idaho commission on human rights, Idaho Code 67-5901 et seq.

#### **9.24.020: DEFINITIONS**

- A. ANY PERSON: Shall be construed to include the city and any owner/employer, lessee, proprietor, manager, agent, employee, whether one or more natural persons, partnerships, associations, organizations, corporations, companies, cooperatives (including its officers and/or board of directors), boards and commissions, engaged in or exercising control over the operation of any business, place of public resort, accommodation, assemblage or amusement in the city of Ketchum.
- B. "DENY" is hereby defined to include any act which directly or indirectly, by any person or his agent or employee, that results or is intended or calculated to result in whole or in part in any discrimination, distinction, restriction, or unequal treatment. It also includes, but is not limited to, the requiring of a person to pay a larger sum than the uniform rates charged other persons, or the refusing or withholding from persons the admission, patronage, custom, presence, frequenting, dwelling, staying, or lodging in any place of public resort, accommodation, assemblage, or amusement except for conditions and limitations established by law and applicable alike to all persons, regardless of sexual orientation, gender identity/expression.
- C. "DISCRIMINATION" is any direct or indirect exclusion, distinction, segregation, limitation, refusal, denial, or other differentiation in the treatment of a person because of a person's actual or perceived sexual orientation or gender identity or because of a person's association with any such person. Discrimination shall not be interpreted to require or to grant or accord any preferential treatment to any person because of that person's sexual orientation or gender identity/expression.
- C. "FULL ENJOYMENT OF" shall be construed to include, but not be limited to, the right to use or purchase real property, any service, commodity or article of personal property offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage or amusement, without acts directly or indirectly causing persons of any particular sexual orientation, gender identity/expression to be treated as not welcome or accepted.
- D. "GENDER EXPRESSION/IDENTITY" means a gender related identity, appearance, expression or behavior of an individual regardless of a person's assigned sex at birth.
- E. "HOUSING ACCOMMODATION" is a building or portion of a building, whether constructed or to be constructed, that is or will be used as the home, domicile, residence, or sleeping quarters of its occupants.

- F. "HUMAN RELATIONS REVIEW BOARD" shall be a quasi-judicial group consisting of three (3) or more persons appointed by the mayor to process complaints and determine if prohibited discriminatory acts have occurred in the city of Ketchum.
- G. "PLACE OF PUBLIC RESORT, ACCOMMODATION, ASSEMBLAGE OR AMUSEMENT" includes, but is not limited to any public place, licensed or unlicensed, kept for gain, hire or reward, or where charges are made for admission, service, occupancy or use of any property or facilities, whether conducted for the entertainment, housing or lodging of transient guests, or for the benefit, use or accommodation of those seeking health, recreation or rest, or for the sale of goods and merchandise, or for the rendering of personal services, or for public conveyance or transportation on land, water or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates, or assembles for amusement, recreation or public purposes, or public halls, public elevators and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or any educational institution wholly or partially supported by public funds, or schools of special instruction, or nursery schools, or day care centers or children's camps; nothing herein contained shall be construed to include, or apply to, any institute, bona fide club, or place of accommodation, which is by its nature distinctly private, provided that where public use is permitted that use shall be covered by this section; nor shall anything herein contained apply to any educational facility operated or maintained by a bona fide religious or sectarian institution.
- H. SEXUAL ORIENTATION: Actual or perceived homosexuality, heterosexuality and/or bisexuality.

#### **9.24.030: PROHIBITED DISCRIMINATORY ACTS**

The following acts are prohibited and constitute a misdemeanor punishable in accordance with Idaho Code 18-113:

- A. To deny to any other person because of sexual orientation and/or gender identity/expression the right to work: (a) by failing or refusing to hire, (b) by discharging, (c) by barring from employment, (d) by discriminating against such person in compensation or in other terms or conditions of employment, or (e) otherwise discriminating against an individual with respect to employment.
- B. To deny to or to discriminate against any person because of sexual orientation and/or gender identity/expression the full enjoyment of any of the accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage, or amusement.
- C. To deny to or discriminate against any other person because of sexual orientation and/or gender identity/expression in the sale, purchase, lease or rental of any housing accommodation, or to otherwise discriminate in the terms and conditions, maintenance, improvement or repair of any housing accommodation.
- D. To discriminate against, harass, threaten, harm, damage, or otherwise penalize another person for opposing an unlawful practice, for filing a complaint, for assisting, or participating in any manner in the investigation, or in mediation under this section.
- E. Aiding, abetting, inciting, compelling or coercing the doing of any act declared by this section to be an unlawful practice, or obstructing or preventing any person from complying with the provisions of this section

#### **9.24.040: EXCEPTIONS**

- A. Notwithstanding any other provision herein, nothing in this section is intended to alter or abridge other rights, protection, or privileges secured under state or federal law. This section shall be construed and applied in a manner consistent with first amendment jurisprudence regarding the freedom of speech and exercise of religion.
- B. This chapter does not apply to:
1. Religious corporations, associations, educational institutions, or societies.
  2. An expressive association whose employment of a person protected by this chapter would significantly burden the association's rights of expressive association under *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000).
  3. The United States government, any of its departments or agencies, or any corporation wholly owned by it; or the state of Idaho or any of its departments, agencies, or political subdivisions, except the City of Ketchum.
- C. This ordinance shall not apply: (a) to the rental of a housing accommodation in a building which contains housing accommodations for not more than two (2) families living independently of each other, if the lessor or a member of his family resides in one (1) of the housing accommodations, or (b) to the rental of a room or rooms in a single family residential housing accommodation by an individual if he or a member of his family resides therein.

#### **9.24.050: ESTABLISHMENT OF HUMAN RELATIONS REVIEW BOARD**

- A. Pursuant to Idaho Code section 50-210, there is hereby established a human relations review board in and for the city of Ketchum (hereinafter referred to as the "Ketchum human relations review board" or the "review board").
- B. The review board shall consist of a quorum of three (3) or more members. All members of the review board shall be appointed by the mayor of the city of Ketchum and confirmed by the city council. Members shall be residents of the city. No member of the review board shall hold any office in any political party.
- C. Members of the review board shall serve without salary but may be paid expenses incurred in the performance of their duties, as approved by city council.
- D. One of the review board's members shall be appointed by the members thereof as chairperson. The chairperson will be responsible for setting review board meetings, coordinating with the mayor and city clerk regarding received complaints and answers, and generally ensuring that the duties of the review board are fulfilled.
- E. The review board shall have jurisdiction over prohibited discriminatory acts committed within the city of Ketchum as it relates to sexual orientation, gender identity/expression.
- F. The review board shall be empowered to promulgate such additional procedures as it determines necessary to implement the intent of this section.
- G. The Ketchum city council hereby grants to the review board, with respect to prohibited discriminatory acts as defined herein, all of the powers necessary to the execution of its duties as set forth herein, provided that those powers shall not exceed those exercised by the Idaho commission on human rights now or as may be granted in the future by the Idaho legislature.

#### **9.24.060: PROCEDURES**

A. Filing A Complaint:

1. Person(s) claiming to be aggrieved by a prohibited discriminatory act may make, sign, and file a verified complaint alleging violations of this section, which shall include the following information:
  - a. The name and address of the aggrieved person(s);
  - b. The name and address of the person(s) alleged to have committed the prohibited practice;
  - c. A concise statement of the facts, including pertinent dates, constituting the alleged discriminatory act;
  - d. If applicable, the address and a description of any property which is involved; and
  - e. Such other information as may be required by the review board.
2. Complaints may be filed in person or by mail at the city clerk's office. All complaints must be received by the city clerk's office within ninety (90) days of the alleged discrimination, or the complaint will not be considered timely.
3. The city clerk shall convey each original complaint received by the city to the chairperson of the Ketchum human relations review board within ten (10) days of the receipt of such complaint.

B. Notification And Answer:

1. Within thirty (30) days of its receipt of a complaint, the Ketchum human relations review board shall determine if it has jurisdiction hereunder to hear the complaint. If the review board determines that it does not have such jurisdiction, it shall dismiss the complaint and notify the aggrieved party. If the review board determines it has jurisdiction to hear the complaint, it shall proceed as follows:
  - a. Send a copy of the complaint to the person(s) charged with a prohibited discriminatory act (the "respondent"); and
  - b. Send a notice to the person(s) aggrieved (the "complainant"), informing them that the complaint has been received.
2. The respondent must file, with the city clerk, a written verified answer to the complaint within thirty (30) days of respondent's receipt of the complaint from the city. The answer shall be conveyed by the city clerk to the chairperson of the review board within ten (10) days. The review board shall within five (5) days send a copy of the answer to the complainant.

**9.24.070: MEDIATION**

- A. After the answer has been received, the review board shall, within fifteen (15) days, invite the parties to voluntarily participate in mediation of their dispute. The parties must respond within fifteen (15) days of being invited to mediate. The parties must accept or reject the invitation to mediation.
- B. If accepted by parties, mediation shall be conducted in accordance with procedures promulgated by the review board. Parties may jointly select a mediator. If parties cannot agree, a mediator shall be selected pursuant to procedures promulgated by the review board. The parties shall be jointly responsible for all financial costs and expenses associated with mediation.
- C. The parties shall notify the review board as to whether the mediation successfully resolved the complaint. Mediation proceedings shall otherwise be confidential. Neither the results thereof, nor any record made in connection therewith, shall be made public unless agreed to in writing by both parties.
- D. If the mediation has successfully resolved the complaint, the review board shall promptly notify the parties that it has dismissed the complaint.

**9.24.080: INVESTIGATION AND DETERMINATION:**

If mediation is not desired or was not successful in resolving the complaint, the review board shall not dismiss the complaint but shall instead undertake the following procedures:

- A. Investigation: The review board shall, in a timely fashion, investigate the allegations of a prohibited discriminatory act set forth in the complaint in coordination with a local law enforcement agency. The city may, in the conduct of such investigation and upon request of the investigator, issue subpoenas to any person charged with a prohibited discriminatory act, commanding such person to furnish information, records or other documents, as necessary to assist in the review board's investigation.
- B. Determination:
  - 1. Finding Of No Cause: If it is determined after the review board's investigation that there is no basis for the allegations of the complaint, the review board shall issue and serve upon the parties written notice of such determination and dismissal of the complaint.
  - 2. Finding Of Cause: If it is determined after the review board's investigation that the respondent has engaged in or is engaging in any unlawful discriminatory act, as defined in this section, the review board shall state its findings of fact, and will refer the matter to the city attorney to pursue civil, equitable or criminal remedies.

**9.24.090: PENALTY:**

- A. A violation of this section shall constitute a misdemeanor, punishable as provided in Idaho Code section 18-113.
- B. A prosecutor may reduce the violation to an infraction, payable by a \$100 fine, if the defendant engages in corrective actions, which may include, but are not limited to the following: sensitivity training for the defendant and/or the defendant's employees; the defendant's agreement to adopt and pursue a policy of nondiscrimination in its practices; and the defendant's agreement to not engage in discriminatory practices in the future. The charge shall be filed as a misdemeanor violation and may only be reduced upon motion of the prosecutor. There shall be no right to a trial by jury for an infraction citation or complaint.
- C. A complaint filed under the provisions of this Chapter must be filed within 180 days of the alleged discriminatory conduct.
- D. Any person who falsely reports a violation of this chapter may be charged with the crime of providing false information (I.C. § 18-5413) or other applicable criminal action.

**9.24.100: PRIVATE RIGHT OF ACTION:**

There is no private right of action that is created by this section or money damages available to any person based on this section.

**9.24.110: SAVINGS AND SEVERABILITY CLAUSE.** If any section, paragraph, sentence or provision hereof, or the application thereof to any particular circumstance shall ever be held invalid or unenforceable by a Court of competent jurisdiction, such decision or decisions shall not affect the validity of the remaining portions hereof, which shall continue in full force and effect and applicable to all circumstances to which it may validly apply.

**Section 2.** Nothing in this Ordinance shall be construed to affect any suit or proceedings in any Court, any rights acquired or liability incurred, and permit issued, or any cause or causes of action existing under the General Ordinances of the City of Ketchum or the State of Idaho.

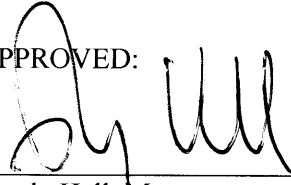
**Section 3. SUMMARY.** That a summary of this Ordinance, attached hereto as Exhibit A, is approved as to both form and content.

**Section 4. REPEALER CLAUSE.** All City of Ketchum Ordinances or parts thereof which are in conflict herewith are hereby repealed.

**Section 5. EFFECTIVE DATE.** This Ordinance shall be in full force and effect after its passage, approval and publication according to law.

PASSED by the CITY COUNCIL and APPROVED by the MAYOR of Ketchum, Idaho on this 22<sup>nd</sup> day of January, 2013.

APPROVED:

  
\_\_\_\_\_  
Randy Hall, Mayor

ATTEST:

  
\_\_\_\_\_  
SANDRA E. CADY, City Clerk

SUMMARY OF ORDINANCE NO. 1102

PUBLIC NOTICE IS HEREBY GIVEN that the City of Ketchum, Idaho, adopted at its regular meeting of January 22, 2013, that Ordinance No. 1102 entitled:


**AN ORDINANCE OF THE CITY OF KETCHUM, BLAINE COUNTY, IDAHO, ENACTING A NEW SECTION TO THE KETCHUM MUNICIPAL CODE TITLE 9.24, TO PROHIBIT DISCRIMINATORY ACTS IN HOUSING, EMPLOYMENT AND PUBLIC ACCOMMODATIONS BASED UPON SEXUAL ORIENTATION AND GENDER IDENTITY/EXPRESSION; ESTABLISHING A PURPOSE AND POLICY DECLARATION; ESTABLISHING DEFINITIONS; ENUMERATING PROHIBITED DISCRIMINATORY ACTS; PROVIDING EXCEPTIONS; ESTABLISHING A HUMAN RIGHTS BOARD; PROVIDING DUE PROCESS INCLUDING MEDIATION, INVESTIGATION, AND HEARING; PROVIDING A PENALTY PROVISION; CLARIFYING THAT THIS ORDINANCE DOES NOT CREATE A PRIVATE RIGHT OF ACTION; PROVIDING A SAVINGS AND SEVERABILITY CLAUSE, APPROVING A SUMMARY OF THE ORDINANCE; AND PROVIDING AN EFFECTIVE DATE.**

This ordinance enacts a new city code provision prohibiting discrimination in the areas of employment, public accommodation, and housing on the basis of sexual orientation or gender identity/expression. It is the policy and intent of the City of Ketchum that all persons are treated fairly and equally in the City of Ketchum; that no person be denied equal protection of the laws or discriminated against because of his or her sexual orientation or gender identity/expression. The ordinance prohibits certain discriminatory acts including the refusal to hire or to fire an employee on the basis of sexual orientation and/or gender identity/expression, deny equal compensation, deny the full enjoyment of accommodations, deny the equal right to purchase, lease, or rent housing accommodations, deny, discriminate, harass, retaliate, or otherwise penalize another person on the basis of or pertaining to sexual orientation. The ordinance provides certain exceptions pursuant to federal law. The ordinance establishes procedures for a human relations review board to administer the ordinance and provide for an informal dispute resolution including mediation. However, the ordinance does provide for criminal penalties including a general misdemeanor. The ordinance clarifies that no private right of action is created by the ordinance. The ordinance provides a savings and severability clause.

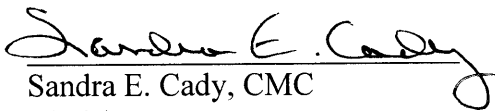
The effective date of Ordinance No. 1102 is the date of its passage, approval and publication. A copy of the full text of the Ordinance is available at the Office of the City Clerk, Ketchum City Hall, 480 East Avenue North, Ketchum, Idaho 83340, and will be provided to any citizen upon personal request during normal office hours pursuant to Idaho Code §50-901A(4).

DATED this 22<sup>nd</sup> day of January 2013.

CITY OF KETCHUM, IDAHO

  
Randy Hall, Mayor

ATTEST:

  
Sandra E. Cady, CMC  
Clerk/Treasurer

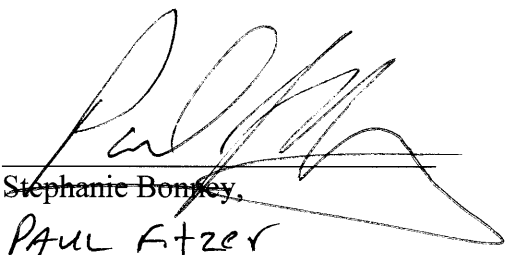


STATEMENT OF LEGAL ADVISOR

I, the undersigned attorney at law, duly licensed in the State of Idaho and serving as City Attorney to the City of Ketchum, Idaho, hereby certify that I have read the attached Summary of Ordinance No. 1102 of the City of Ketchum and that the same is true and complete and provides adequate notice to the public of the contents of said Ordinance.

Dated this 22<sup>nd</sup> day of January, 2013.

Ketchum City Attorney

  
Stephanie Bonney,

PAUL FITZER

Publish: Idaho Mountain Express

Date: January 30, 2013