

## **TITLE 23 - CIVIL RIGHTS**

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## **TITLE 23 - CIVIL RIGHTS**

(Title added by Ordinance No. 164709, effective October 3, 1991.)

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### **CHAPTER 23.01 - CIVIL RIGHTS**

#### **Sections:**

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#### **23.01.010 Policy.**

(Amended by Ordinance No. 175158, effective January 15, 2001.) It is the policy of the City of Portland to eliminate discrimination based on race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, gender identity or source of income. Such discrimination poses a threat to the health, safety and general welfare of the citizens of Portland and menaces the institutions and foundation of our community.

#### **23.01.020 Intent.**

(Amended by Ordinance No. 175158, effective January 15, 2001.) The City Council finds that discrimination on the basis of sexual orientation, gender identity and source of income exists in the City of Portland and that state law does not clearly prohibit such discrimination. It is the intent of the Council, in the exercise of its powers for the protection of the public health, safety, and general welfare and for the maintenance of peace and good government, that every individual shall have an equal opportunity to participate fully in the life of the City and that discriminatory barriers to equal participation in employment, housing, and public accommodations be removed.

#### **23.01.030 Definitions.**

(Amended by Ordinance No. 175158, effective January 15, 2001.)

- A. “Sexual Orientation”** - actual or supposed male or female homosexuality, heterosexuality or bisexuality.
- B. “Source of Income”** - the means by which a person supports himself or herself and his or her dependents, including but not limited to money and property from any occupation, profession or activity, from any contract, settlement or agreement, from federal or state payments, court-ordered payments, gifts, bequests, annuities, life insurance policies, and compensation for illness or injury, but excluding any money

or property derived in a manner made illegal or criminal by any law, statute or ordinance.

- C. “Gender Identity”** – a person’s actual or perceived sex, including a person’s identity, appearance, expression or behavior, whether or not that identity, appearance, expression or behavior is different from that traditionally associated with the person’s sex at birth.
- D.** All other terms used in this ordinance are to be defined as in Oregon Revised Statutes Chapter 659.

**23.01.040 Exceptions.**

(Amended by Ordinance No. 175158, effective January 15, 2001.)

- A.** The prohibitions in this Chapter against discriminating on the basis of sexual orientation and gender identity do not apply:
  - 1.** To the leasing or renting of a room or rooms within an individual living unit which is occupied by the lessor as his or her residence;
  - 2.** To dwellings with not more than two individual living units where one of the units is owner occupied;
  - 3.** To space within a church, temple, synagogue, religious school, or other facility used primarily for religious purposes.
- B.** The prohibitions in this Chapter against discriminating on the basis of source of income do not prohibit:
  - 1.** Inquiry into and verification of a source or amount of income;
  - 2.** Inquiry into, evaluation of, and decisions based on the amount, stability, security or creditworthiness of any source of income;
  - 3.** Screening prospective purchasers and tenants on bases not specifically prohibited by this chapter or state or federal law;
  - 4.** Refusal to contract with a governmental agency under 42 U.S.C. §1437f(a) “Section 8.”
- C.** The prohibitions in this Chapter against discriminating on the basis of gender identity do not prohibit:
  - 1.** Health or athletic clubs or other entities that operate gender-specific facilities involving public nudity such as showers and locker rooms, from requiring an individual to document their gender or transitional status. Such

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documentation can include but is not limited to a court order, letter from a physician, birth certificate, passport, or driver's license.

2. Otherwise valid employer dress codes or policies, so long as the employer provides, on a case-by-case basis, for reasonable accommodation based on the health and safety needs of persons protected on the basis of gender identity.
3. The above exceptions do not excuse a failure to provide reasonable and appropriate accommodations permitting all persons access to restrooms consistent with their expressed gender.

#### **23.01.050 Discrimination in Employment Prohibited.**

(Amended by Ordinance No. 175158, effective January 15, 2001.)

- A. It shall be unlawful to discriminate in employment on the basis of an individual's race, religion, color, sex, national origin, marital status, age if the individual is 18 years of age or older, or disability, by committing any of the acts made unlawful under the provisions of ORS 659.030 and 659.425.
- B. In addition, it shall be unlawful to discriminate in employment on the basis of an individual's sexual orientation, gender identity, source of income or familial status, by committing against any such individual any of the acts already made unlawful under ORS 659.030 when committed against the categories of persons listed therein.

#### **23.01.060 Discrimination in Selling, Renting, or Leasing Real Property Prohibited.**

(Amended by Ordinance No. 175158, effective January 15, 2001.)

- A. It shall be unlawful to discriminate in selling, renting, or leasing real property on the basis of an individual's race, religion, color, sex, national origin, marital status, familial status, or disability, by committing any of the acts made unlawful under the provisions of ORS 659.033 and 659.430.
- B. In addition, it shall be unlawful to discriminate in selling, renting, or leasing real property on the basis of an individual's sexual orientation, gender identity, source of income, or age if the individual is 18 years of age or older except as is excluded in ORS 659.033 subsection 6 (a) and (b), by committing against any such individual any of the acts already made unlawful under ORS 659.033 when committed against the categories of persons listed therein.

#### **23.01.070 Discrimination in Places of Public Accommodation Prohibited**

(Amended by Ordinance No. 175158, effective January 15, 2001.)

- A. It shall be unlawful to discriminate in public accommodations on the basis of an individual's race, religion, color, sex, national origin, marital status, age if the

individual is 18 years of age or older, or disability, by committing any of the acts made unlawful under the provisions of ORS 659.037, 659.425, or ORS 30.670 to 30.685.

- B.** In addition, it shall be unlawful in public accommodations to discriminate on the basis of an individual's sexual orientation, gender identity, source of income or familial status, by committing against any such individual any of the acts already made unlawful under ORS 659.037 or ORS 30.670 to 30.685 when committed against the categories of persons listed therein.

**23.01.075 Closed Caption Activation Requirement.**

(Added by Ordinance No. 187454, effective December 18, 2015.)

- A. Definitions.** As used in this Section 23.01.075, the following words and phrases shall be construed as defined in this Subsection:

- 1. "Closed Captioning"** means a transcript or dialog of the audio portion of a television program that is displayed on the bottom portion of a television receiver screen when the user activates the feature.
- 2. "Closed Captioned Television Receiver"** means a receiver of television programming that has the ability to display closed captioning, including but not limited to a television, digital set top box, and other technology capable of displaying closed captioning for television programming.
- 3. "Public Area"** means any part of a public facility that is open to the general public.
- 4. "Public Facility"** shall have the same meaning as place of public accommodation, as defined in ORS 659A.400 (2013).
- 5. "Regular Hours"** means the hours of any day in which a Public Facility is generally open to members of the general public.

- B.** Any person owning or managing a public facility must activate closed captioning on any closed captioned television receiver in use in any public area during regular hours.

- C.** A person owning or managing a public facility is not required to make a closed captioned television receiver available for viewing in a public area if:

- 1.** No receiver of television programming of any kind is available in a public area of the public facility; or,
- 2.** The only receiver of television programming available in a public area of the public facility is incapable of displaying close captioning.

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**D. Civil Penalties.** A violation of this Section may result in the assessment of civil penalties, as provided below:

1. If the City Attorney reasonably believes a violation has occurred, the City Attorney may issue a written determination addressing the following:
  - a. A reference to this Section, describing the violations that have occurred or are occurring;
  - b. The date and the time of the occurrence, and the street address or location of the public facility;
  - c. A concise statement of the matters asserted or charged; and,
  - d. A request that the addressee provide a written response to the City Attorney within 10 business days either disputing the occurrence of the violation or describing how the violation has been abated and how such violations will be prevented from reoccurring.

The determination may be personally delivered to the person, or may be served by Registered or Certified Mail. For purposes of this Subsection, service by registered or certified mail is complete and effective when a correctly addressed notice is deposited with the postal service after being either certified or registered by the postal service.

2. If the person fails to provide a written response, or the written response fails to reasonably satisfy the City Attorney regarding the identified violations, the City Attorney may file a complaint with the Code Hearings Officer, as provided under Section 22.03.020, for violations of this Section 23.01.075, asking the Code Hearings Officer to impose civil penalties not to exceed \$500 for each day such violation is committed or permitted to continue as provided in this Section. Having made a determination to ask that the Code Hearings Officer to impose civil penalties as provided by this Section, the City Attorney shall give the person written notice of the determination by causing notice to be served upon the person at their business or residence address. Service of the notice shall be accomplished by mailing the notice by regular mail, or at the option of the City Attorney, by personal service in the same manner as a summons served in an action at law. Mailing of the notice by regular mail shall be prima facie evidence of receipt of the notice. Service of notice upon the person apparently in charge of a business during its hours of operation shall constitute prima facie evidence of notice to the business owner.
3. In determining the amount of the civil penalty to be imposed for violations of the provisions of this Chapter, the Code Hearings Officer shall consider:



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- a. The extent and nature of the person's involvement in the violation;
- b. The harms, whether economic, financial or otherwise, which occurred or were suffered as a result of the violation;
- c. Whether the violations were isolated or temporary, or repeated or continuous;
- d. The magnitude and seriousness of the violation;
- e. The City's costs of investigating the violations and correcting or attempting to correct the violation; and,
- f. Any other applicable facts bearing on the nature and seriousness of the violation.

**23.01.080 Enforcement and Administration.**

(Amended by Ordinance No. 165319, effective April 15, 1992.)

- A. Enforcement of all or any part of this Chapter shall be governed by the procedures established in ORS Chapter 659. Rules adopted by the City Attorney pursuant to section 23.01.090 of this Chapter may also be used to implement enforcement and administration of this Chapter.
- B. Any person claiming to be aggrieved by an unlawful employment practice under this Chapter may file a complaint with the Commissioner of the Bureau of Labor and Industries under procedures established in ORS 659.040, and any person claiming to be aggrieved by an unlawful practice under this Chapter relating to selling, renting or leasing real estate or discrimination in public accommodations, may file a complaint with the Commissioner under procedures established in ORS 659.045.
- C. The Commissioner may then proceed and shall have the same enforcement powers under this Chapter, and if the complaint is found to be justified the complainant shall be entitled to the same remedies, under ORS 659.050 to 659.085 as in the case of any other complaint filed under ORS 659.040 or 659.045.
- D. Any order issued by the Commissioner of the Bureau of Labor and Industries under this Chapter shall be viewed as one issued by a hearings officer employed by the City within the meaning of ORS 46.045 (3) and shall be fully enforceable by the City.
- E. Any person claiming to be aggrieved by an unlawful discriminatory act under the provisions of this code shall have a cause of action in any court of competent jurisdiction for damages and such other remedies as may be appropriate. Election of remedies and other procedural issues relating to the interplay between administrative proceedings and private rights of action shall be handled as provided

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for in ORS 659.095 and 659.121. The court may grant such relief as it deems appropriate, including, but not limited to, such relief as is provided in ORS 659.121.

#### **23.01.090 Authority of City Attorney to Adopt Rules.**

- A.** The City Attorney is hereby authorized to adopt rules, procedures and forms to assist in the implementation of the provisions of this Chapter.
- B.** Any rule adopted pursuant to this section shall require a public review process. Not less than ten nor more than thirty days before such public review process, notice shall be given by publication in a newspaper of general circulation. Such notice shall include the place, time, and purpose of the public review process and the location at which copies of the full text of the proposed rules may be obtained.
- C.** During the public review, a designee of the City Attorney shall hear testimony or receive written comment concerning the proposed rules. The City Attorney shall review the recommendation of his or her designee, taking into consideration the comments received during the public review process, and shall either adopt the proposal, modify it or reject it. If a substantial modification is made, additional public review shall be conducted, but no additional notice shall be required if such additional review is announced at the hearing at which the original comments are received.
- D.** Unless otherwise stated, all rules shall be effective upon adoption by the City Attorney and shall be filed in the office of the City Auditor.
- E.** Notwithstanding paragraphs B and C of this section, an interim rule may be adopted without prior notice upon a finding that failure to act promptly will result in serious prejudice to the public interest or the interest of the affected parties. The finding shall state the specific reasons for such prejudice. Any rule adopted pursuant to this paragraph shall be effective for a period of not longer than 180 days.

#### **23.01.100 Construction.**

This Chapter shall be broadly construed, consistent with its remedial purpose.

#### **23.01.110 Severability of Provisions.**

If any part or provision of this Chapter, or application thereof to any person or circumstance, is held invalid, the remainder of this Chapter and the application of the provision or part thereof, to other persons not similarly situated or to other circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Chapter are severable.

**CHAPTER 23.10 - REMOVING BARRIERS  
TO EMPLOYMENT**

(Chapter added by Ordinance No. 187459, effective  
December 25, 2015.)

**Sections:**

- 23.10.010 Purpose.
- 23.10.020 Definitions.
- 23.10.030 Use of Criminal History in Employment Decisions.
- 23.10.040 Exceptions.
- 23.10.050 Administrative Rules Implementing this Chapter.
- 23.10.060 Enforcement.
- 23.10.070 Confidentiality and Nondisclosure.
- 23.10.080 Public Education and Outreach.
- 23.10.090 Severability.
- 23.10.100 Application.

**23.10.010 Purpose.**

The purpose of this Chapter is to remove barriers to employment so that people with criminal histories can provide for themselves and their families; to reduce disparate impacts on people of color that result from the use of criminal history information in hiring and employment decisions; and to reduce recidivism through the reintroduction of formerly incarcerated persons into community life.

**23.10.020 Definitions.**

(Amended by Ordinance No. 187678, effective May 13, 2016.) For purposes of this Chapter, the following definitions apply:

- A. “City” means the City of Portland as defined in Title 1 of the Code of the City of Portland.
- B. “Employer” means any person or entity who directly or through an agent employs another for a position being performed a majority of the time within the City of Portland, but does not include:
  - 1. The United States Government;
  - 2. The State of Oregon and any office, department, agency, authority, institution, association, society or other body of the state, including the legislature and the judiciary;
  - 3. Any political subdivision of the State of Oregon or any county, city, district, authority, public corporation or public entity other than the City of Portland;  
or

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- 4. Employers with fewer than six employees.
- C. “Employ” means to engage or use the personal service of another person on a full-time, part-time, temporary or seasonal basis, where the Employer reserves the right to control the means by which such service is performed.
- D. “Conditional Offer of Employment” means any offer for a position that is conditioned solely on:
  - 1. The results of an Employer’s inquiry into or gathering of information about a person’s arrest or conviction history; and/or
  - 2. Some other contingency expressly communicated to the applicant at the time of the offer.

**23.10.030 Use of Criminal History in Employment Decisions.**

- A. It is an unlawful practice for an Employer to exclude an applicant from consideration solely because of the applicant’s criminal history.
- B. An Employer may consider an applicant’s criminal history in the hiring process only after making a Conditional Offer of Employment. An Employer violates this Chapter if an Employer accesses an applicant’s criminal history prior to making a Conditional Offer of Employment.
- C. It is not an unlawful practice for an Employer to rescind a Conditional Offer of Employment based upon an applicant’s criminal history if an Employer determines in good faith that a specific offense or conduct is job related for the position in question and consistent with business necessity.
- D. In making the determination of whether an applicant’s criminal history is job related for the position in question and consistent with business necessity, an Employer must conduct an individualized assessment of:
  - 1. The nature and gravity of the criminal offense;
  - 2. The time that has elapsed since the criminal offense took place; and
  - 3. The nature of the Employment held or sought.
- E. Nothing in this Section prevents an employer from considering an applicant’s criminal history after making a conditional offer of employment, except that an employer shall not consider:
  - 1. An arrest not leading to a conviction, except where a crime is unresolved or charges are pending against an applicant;

2. Convictions that have been judicially voided or expunged; or
  3. Charges that have been resolved through the completion of a diversion or deferral of judgment program for offenses not involving physical harm or attempted physical harm to a person.
- F.** If, after consideration of an applicant's criminal history an employer rescinds the conditional offer of employment, the employer shall notify the applicant in writing of its decision and shall identify the relevant criminal convictions on which the decision is based.

**23.10.040 Exceptions.**

- A.** The prohibitions in this Chapter do not apply:
1. If federal, state or local law, including corresponding rules and regulations, requires the consideration of an applicant's criminal history;
  2. To an employer that is a law enforcement agency;
  3. To an employer in the criminal justice system; or
  4. To an employer seeking a nonemployee volunteer.
- B.** For the following positions, an Employer may consider an applicant's criminal history at any point in the hiring process, and may use the City Criminal History Matrix provided by administrative rule to screen applicants, but must nonetheless comply with all other requirements of this Chapter. An individualized assessment shall be required for any criminal convictions not contained on the City Criminal History Matrix.
1. Positions involving direct access to or the provision of services to children, the elderly, persons with disabilities, persons with a mental illness, or individuals with alcohol or drug dependence or substance abuse disorders;
  2. Positions which have been determined by administrative rule to present heightened public safety concerns or a business necessity;
  3. Positions designated by the Employer as part of a federal, state or local government program designed to encourage the employment of those with criminal histories.

**23.10.050 Administrative Rules Implementing this Chapter.**

- A.** The City Attorney shall draft rules, procedures and forms to assist in the implementation of the provisions of this Chapter and bring these rules, procures and forms before Council for authorization.

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- B.** All rules adopted to implement this Chapter shall be subject to a public review process.
- C.** Not less than 10 or more than 30 days before such public review process, a notice shall be published in a newspaper of general circulation and sent to stakeholders who have requested notice. The notice shall include the place and time, when the rules will be considered and the location at which copies of the full text of the proposed rules may be obtained.
- D.** The duration of public review process shall be a minimum of 21 calendar days from the date of notification for written comment.
- E.** During the public review process a designee of the City shall hear testimony or receive written comment concerning the proposed rules.
- F.** The City shall review and consider the comments received during the public review process, and shall either adopt, modify, or reject the proposed rules.
- G.** All initial rules shall be effective July 1, 2016, and all subsequent rules shall be effective 30 days after adoption by the City Attorney and shall be filed in the Office of the City Auditor.
- H.** Notice of changes in Administrative Rules shall be published in a newspaper of general circulation, sent to stakeholders who have requested notice and posted on the BOLI and City web sites.

#### **23.10.060 Enforcement.**

- A.** The City may contract with BOLI to enforce this Chapter.
- B.** Pursuant to agreement between BOLI and the City, enforcement may be governed by the procedures established pursuant to ORS 659A.820 through 659A.865, or such other procedures as may be agreed upon by BOLI and the City. Rules adopted by the City pursuant to Section 23.10.050 of this Chapter may also be used to implement enforcement and administration of this Chapter.
- C.** Pursuant to agreement between BOLI and the City, any person claiming to be aggrieved by an unlawful employment practice under this Chapter, the State Attorney General or the City Attorney may file a complaint with BOLI under procedures established under ORS 659A.820 through 659A.865, or such other procedures as BOLI or the City may establish for taking complaints which shall include options for resolution of complaints through such means as mediation.
- D.** Pursuant to agreement, BOLI shall have the same enforcement powers with respect to the rights established under this Chapter as are established under ORS 659A.820 through 659A.865, and if the complaint is found to be justified, the complainant

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may be entitled to any remedies provided under ORS 659A.820 through 659A.865, and their implementing regulations and any additional remedies, provided that those remedies are specified in the agreement between the City and the BOLI Commissioner.

**23.10.070      Confidentiality and Nondisclosure.**

Any criminal history information obtained by an Employer shall remain confidential except where disclosure is required by law.

**23.10.080      Public Education and Outreach.**

The City shall develop and implement an outreach program to inform Employers and members of the public about the terms of this Chapter.

**23.10.090      Severability.**

If a provision of this Chapter or application thereof to any person or circumstance is judged invalid, the invalidity shall not affect the other provisions or application of the Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are declared severable.

**23.10.100      Application.**

This Chapter is effective immediately for drafting of the administrative rules under Section 23.10.050, contracting with BOLI under Subsection 23.10.060 A. and public education and outreach under Section 23.10.080. Enforcement of this Chapter under Subsection 23.10.060 B., C. & D. shall commence July 1, 2016.

