

ORDINANCE NUMBER XXXX

AN ORDINANCE OF THE MISSOULA CITY COUNCIL, AMENDING MISSOULA MUNICIPAL CODE TITLE 5 BUSINESS LICENSES AND REGULATIONS TO ADD CHAPTER 5.110 ENTITLED "ONLINE PRIVACY PROTECTIONS" GENERALLY PROHIBITING BUSINESSES FROM REQUESTING ACCESS TO PERSONAL ACCOUNTS AND PRIVATE INFORMATION ON ELECTRONIC COMMUNICATION DEVICES;

BE IT ORDAINED BY THE MISSOULA CITY COUNCIL THAT MISSOULA MUNICIPAL CODE TITLE 5, CHAPTER 110, SECTIONS 5.110.010 THROUGH 5.110.040 BE ADDED AS FOLLOWS:

Title 5.110 Online Privacy Protections

Sections:

- 5.110.010 Purpose and Intent
- 5.110.020 Definitions
- 5.110.030 Restrictions
- 5.110.040 Exemptions
- 5.110.050 Violation – Penalty and Civil Remedy

Section 1

5.110.010 Purpose and Intent.

The intent of the City of Missoula is to protect personal accounts and private information on electronic communication devices of applicants and employees while protecting a business's access to information that is otherwise public or proprietary.

A. The city finds that requests for personal and private electronic communication threaten Missoulians' right to privacy.

B. The city does not intend to prohibit law enforcement from conducting investigations into illegal activity in order to ensure compliance with applicable laws.

Section 2

5.110.020 Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

- (1) "Applicant" means a person applying for employment.
- (2) "Electronic communication device" means any device that uses electronic signals to create, transmit, or receive information, including computers, telephones, personal digital assistants, and any other similar device.
- (3) "Employment" means the relationship between the business and employee.

(4) "Personal account" means any password-protected information accessed via an electronic communication device, either online or offline, including but not limited to media such as text, audio, video, images, programs, or services.

(5) "Privacy settings" means the settings associated with a personal account that regulates the amount of information that the account holder makes publicly available.

Section 3

5.110.030 Restrictions.

Except as provided in section 4, a business, a business's agent, or a business's representative may not:

- (1) Require an employee or applicant to:
 - (a) Disclose the user name, password, or any other means of access to a personal account;
 - (b) Disclose any information not publicly available that is protected by a password on a personal account;
 - (c) Add any person or any other person's personal account to a list of contacts associated with a personal account; or
 - (d) Change the privacy settings associated with a personal account;

Section 4

5.110.040 Exemptions

Sections 1 through 4 do not prohibit:

- (1) Law enforcement from accessing personal accounts pursuant to a court order or subpoena; or
- (2) A business or business's agent from:
 - (a) Conducting an investigation for the purpose of compliance with applicable laws or regulatory requirements;
 - (b) Requiring an employee to disclose any user name, password, or other means of accessing non-personal accounts or services that provide access to the business's computer or information systems;
 - (c) Requiring or requesting an employee to disclose a user name, password, or other method of access for the purpose of accessing an business-issued electronic communications device;
- (3) Any requests for personal accounts and private information on electronic communication devices by businesses if that business is located outside city limits and city residents are employees or applicants.

Section 5

5.110.050 Violation – Penalty and Civil Remedy.

(1) Any illegal requests for personal accounts and private information on electronic communication devices are to be civil municipal ordinance violations intended to be enforceable solely by the complaining person claiming a violation of these sections or their authorized representative through a civil proceeding within the exclusive jurisdiction of the City of Missoula Municipal Court. The Montana Rules of Civil Procedure shall apply, except and unless the City of

Missoula Municipal Court establishes alternative rules of civil procedure for matters within the exclusive jurisdiction of the City of Missoula Municipal Court.

(2) Any person claiming a violation of this chapter may seek remedies, injunctive relief, or other equitable relief by petition to the municipal court, or any other court of competent jurisdiction. Any person claiming a violation of this ordinance must seek such relief within:

- (A) 180 days of the last alleged violation,
- (B) 180 days of the conclusion of a grievance proceeding initiated by the complainant in accordance with a procedure as established by a contract, written rule or policy, or collective bargaining agreement, or
- (C) 300 days of the last alleged violation if a grievance proceeding initiated by the complainant in accordance with a procedure as established by a contract, written rule or policy, or collective bargaining agreement has not been completed within 120 days of initiation of the proceeding.

(3) The initiation of or the granting of relief under a grievance procedure shall not preclude or limit any other claims or remedies available under this chapter.

Defendants shall not collect attorney's fees unless the claim is clearly frivolous, unreasonable, or factually groundless, or the claimant continued to litigate after the claim clearly became so.

(4) There shall be no imprisonment as a penalty for a violation of this chapter.

Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The council hereby declares that it would have passed this ordinance and each section subsection, sentence, clause, phrase, and words thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or words have been declared invalid or unconstitutional, and if for any reason this ordinance should be declared invalid or unconstitutional, then the remaining ordinance provisions will be in full force and effect.