

ORDINANCE NO. 17-4

**AN ORDINANCE OF THE CITY OF PORTAGE, INDIANA
CREATING CHAPTER 3, ENTITLED
“HUMAN RIGHTS”**

BE IT, AND IT HEREBY IS, ORDAINED by the Common Council of the City of Portage, Indiana as follows:

Section 1. Ordinance Addition. A new Chapter 3 of the City of Portage Municipal Code, entitled “Human Rights” shall hereby be created to read as follows:

Article I – In General

Sections 3-1 through 3-15 - Reserved.

Article II – Human Rights Coordinator

Section 3-16 – Mayor may appoint

The Mayor may appoint an existing city employee to carry out any or all of the duties, obligations, rights or powers under the provisions of this chapter, who may have such job title as the Mayor designates.

Sections 3-17 through 3-2 – Reserved.

Article III – Human Rights Committee

Division 1. – Generally

Section 3-19 – Establishment

The Human Rights Committee is hereby created.

Section 3-20 – Appointment of Members

The Human Rights Committee shall consist of nine (9) members. One member shall be appointed by each elected official of the City of Portage. Each member shall serve for a term of one year.

Section 3-21 – Duties

The Human Rights Committee shall gather information on the conditions of human rights in the City of Portage. The Human Right Committee shall work with the Mayor, Common Council and Human Rights Coordinator, if one is appointed, to provide education and outreach to the residents and businesses of the City of Portage on the provisions of this Chapter.

The Committee shall also be tasked with receiving complaints from residents under this chapter. The Committee shall meet at least bi-annually to review the type and nature of complaints received by the City to determine the pattern, type and/or level of discriminatory practices which may occur. The Committee may recommend additional measures and protections to the Common Council based on the review.

Article IV – Discrimination

Division 1. – Generally.

Section 3-30 - Intent and purpose.

It is the intent of the City of Portage in adopting this article, to secure an end, in the city, to discrimination, including, but not limited to, discrimination by reason of race, color, creed, class, national origin, religion, sex, age, marital status, familial status, physical and mental disability, personal appearance, sexual orientation, gender identity, veteran status, family responsibilities, matriculation, political affiliation, prior arrest or conviction record or source of income, or any other discrimination based upon categorizing or classifying a person rather than evaluating a person's unique qualifications relevant to an

opportunity in housing, employment, credit or access to public accommodations.

Section 3-31 – Short title.

This article may be referred to as the “Human Rights Ordinance.”

Section 3-32 – Definitions.

Bona fide occupational qualification. A qualification reasonably necessary to the normal operation of a particular business.

Complainant. A person who believes that he/she has been aggrieved by a violation of a provision of this article and who files a complaint with the commission or officer.

Council. The Common Council of the City of Portage, Indiana.

Credit transaction. Any invitation to apply for credit, application for credit, extension of credit or credit sale.

Disability. The term "disability," with respect to an individual, means (a) a physical or mental impairment that substantially limits one (1) or more of the major life activities of an individual; (b) a record of such an impairment; or (c) being regarded as having such an impairment.

Discrimination. Any practice or act which is unlawfully based wholly or partially on the race, color, creed, class, national origin, religion, sex, age, marital status, physical or mental disability, personal appearance, sexual orientation, gender identity, family responsibilities, matriculation, political affiliation, prior arrest or conviction record or source of income of any individual, or any subclass of the above groups.

Employee. Any individual employed or seeking employment from an employer.

Employer. Any person who, for compensation, employs any individual except for the employer's parents, spouse or children; or who employs domestic servants engaged in and about the employer's household.

Employment agency. Any person regularly undertaking or attempting, with or without compensation, to procure employees for an employer or to procure for employees the opportunity to work for an employer, including any agent of such a person.

Family responsibilities. The state of being, or the potential to become, a contributor to the support of a person or persons in a dependent relationship, irrespective of their number, including single parents.

Gender identity. The actual or perceived gender-related identity, expression, appearance, or mannerisms, or other gender-related characteristics of an individual, regardless of the individual's designated sex at birth..

Labor organization. Any collective bargaining unit, committee, group, association or plan in which employees participate directly or indirectly and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours or other terms, conditions or privileges

of employment.

Lease. This includes sublease, assignment, rental, or providing the use of real property for a fee, goods, services or anything of financial value, and includes any contract to do any of the foregoing.

Marital status. The state of being married, separated, divorced, widowed or single and the conditions associated therewith, including pregnancy or parenthood.

Matriculation. The condition of being enrolled in college or a university, whether as an undergraduate, graduate or professional student in any area of study, full-time or part-time, in either a degree or non-degree program, or in a business, nursing, professional, secretarial, technical or vocational school or an adult educational program.

Owner. Any person who holds legal or equitable title to, or owns any beneficial interest in, any real property or who holds legal or equitable title to a share of, or holds any beneficial interest in, any real estate cooperative which owns any real property.

Person. One or more individuals, labor unions, employers, employment agencies, partnerships, associations, creditors, corporations, cooperatives, legal representatives, government agency, trustees, owner, or any agent or representative of any of the foregoing.

Personal appearance. The outward appearance of any person, irrespective of sex, with regard to bodily condition or characteristics, such as weight, height, facial features, or other aspects of appearance. It shall not relate, however, to the requirement of cleanliness, uniforms, or prescribed attire, if and when such requirement is uniformly applied for admittance to a public accommodation or to employees in a business establishment for a reasonable business purpose.

Political affiliation. The state of belonging to or endorsing any political party or organization or taking part in any activities of a political nature.

Public accommodations. All places, businesses or individuals offering goods, services or accommodations to the general public.

Real property. Any real estate, vacant land, building or structure, or any part thereof within the city limits of Portage, Indiana.

Respondent. A person charged with a violation of a provision of this article.

Sexual harassment. Any unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, housing, or access to public accommodations, (2) submission to or rejection of such conduct by an individual is used as the basis for decisions in employment, housing, or access to public accommodations affecting such individual, or (3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive environment for working, housing, or use of public

accommodations.

Sexual Orientation – actual or perceived homosexuality, heterosexuality, or bisexuality.

Source of income. The point or form of the origination of legal gains of income accruing to a person in a stated period of time; from any occupation, profession or activity, from any contract, agreement or settlement, from federal, state or local payments, including Home Choice Vouchers or any other rent subsidy or rent assistance program, from court ordered payments or from payments received as gifts, bequests, annuities or life insurance policies.

Sections 3-33 – 3-43 – Reserved.

Article V. – Prohibited Practices

Section 3-44 – Discrimination in opportunities, generally.

(a) Every individual shall be afforded the opportunity to participate fully in the economic, cultural and intellectual life that is available in the city, which shall include but not be limited to opportunities in employment, housing, places of public accommodation and credit or commercial transactions.

(b) It shall further be a discriminatory practice to discriminate in the provisions of any of the foregoing opportunities.

(c) With respect to age, physical or mental disability, matriculation or source of income, it shall not be a discriminatory practice to accord preferential treatment to any individual when such treatment is designed to promote the safety, health or welfare of such individuals because of their circumstances, relative to their age, physical or mental disability, matriculation or source of income, which would not normally allow them to enjoy, to the fullest extent, those benefits of our society which are generally available to others.

Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

Section 3-45 – Employment.

(a) By an employer. It shall be a discriminatory practice for an employer to do any of the following acts for a reason based wholly or partially on discrimination:

(1) To fail or refuse to hire, to discharge or to accord adverse, unlawful and unequal treatment to any person with respect to his/her application, hiring, training, compensation, tenure, upgrading, promotion, layoff or any other terms, conditions or privileges of employment;

(2) To limit, segregate or classify his/her employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his/her status as an employee; provided, that an employer who is discriminating with respect to compensation shall not, in order to comply with the provisions of this section, reduce the wage rate of any employee;

(3) To engage in, permit, or tolerate sexual harassment.

(b) By an employment agency. It shall be a discriminatory practice for an employment agency to do any of the following acts for a reason based wholly or partially on discrimination:

(1) To fail or refuse to refer for employment any individual, or otherwise to discriminate against any individual in any way which would deprive or tend to deprive such individual of an employment opportunity;

(2) To engage in, permit, or tolerate sexual harassment.

(c) By an employer or employment agency. It shall be a discriminatory practice for an employer or employment agency to make or use a written or oral inquiry or form of application that elicits or attempts to elicit information for a reason based wholly or partially on discrimination; to make or keep a record of or disclose such information, except that the collection and reporting of such information shall not be unlawful if done for equal opportunity or affirmative action purposes pursuant to any local, state or federal government equal opportunity or affirmative action program.

(d) By a labor organization. It shall be a discriminatory practice for a labor organization to do any of the following acts for a reason based wholly or partially on discrimination:

(1) To exclude or to expel from its membership, or otherwise discriminate against any individual;

(2) To limit, segregate or classify its membership;

(3) To classify or fail or refuse to refer for employment any individual in any way which would deprive or tend to deprive such individual of an employment opportunity, or otherwise adversely affect his/her status as an employee or an applicant for employment;

(4) To engage in, permit, or tolerate sexual harassment.

(e) By an employer, employment agency or labor organization. It shall be a discriminatory practice for an employer, employment agency or labor organization to do any of the following acts for a reason based wholly or partially on discrimination:

(1) To exclude any individual in admission to, or employment in, any program established to provide apprenticeship or other training or retraining, including an on-the-job training program;

(2) To place or accept an order or request for referrals, to print or publish, or cause to be printed or published, any notice or advertisement, or use any publication form, relating to employment by such an employer, or to membership, or any classification or referral for employment by such a labor organization or employment agency, indicating any preference, limitation, specification or distinction based on discrimination.

(f) Exceptions:

(1) It shall not be a discriminatory practice for an employer to observe the conditions of a bona fide seniority system or a bona fide employee benefit system such as retirement, pension or insurance plan which is not a subterfuge to evade the purposes of this article, except that no such employee seniority system or benefit plan shall excuse the failure to hire any individual.

(2) It shall not be a discriminatory practice for a notice or advertisement to indicate a preference, limitation or specification where such factors are bona fide occupational qualifications necessary for employment. Nor shall it be unlawful for a person to request, accept an order for, refer or hire an individual based on such a preference, limitation or specification where such factors are bona fide occupational qualifications necessary for such employment.

(3) It shall not be a discriminatory practice for any person to develop a lawful affirmative action plan designed to overcome the effects of past discrimination and to take action not otherwise prohibited by this article or state or federal law to carry out any such affirmative action plan.

Section 3-46 – Public accommodations.

(a) Generally.

(1) It shall be a discriminatory practice to do any of the following acts wholly or partially for a reason based on discrimination: To deny, directly or indirectly, or charge a higher price than the regular rate, for the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any place of public accommodation; to print, circulate, post, mail, or otherwise cause, directly or indirectly, to be published a statement, advertisement or sign which indicates that the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations of a place of public accommodation will be refused, withheld from or denied an individual; or that an individual's patronage of, or presence at, a place of public accommodation is objectionable, unwelcome, unacceptable or undesirable.

It shall also be a discriminatory practice to fail to make reasonable modifications to policies, practices or procedures when such modifications are necessary to afford equal services or accommodations to individuals with disabilities; to fail to remove architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal may be readily achievable; to fail to take such steps as may be necessary to ensure that no individual with a disability is excluded, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services. A party providing goods or services to the public shall not be required to take any action under this section that would fundamentally alter the nature of such goods and services being offered or would result in an undue burden.

(b) Credit transactions:

(1) It shall be a discriminatory practice for any person to deny, refuse or restrict the amount or use of credit that is extended; or to impose different terms or conditions with respect to extensions of credit based on discrimination.

(2) It shall be a discriminatory practice for any person to refuse, upon the written request of an unsuccessful applicant for credit, to provide within a reasonable period of time such an applicant with a written statement explaining the reason(s) for the denial, refusal or restriction of the amount or use of credit.

(3) It shall not be a discriminatory practice for any party to a credit transaction to consider the credit history of any individual applicant and to use accepted standards to determine an individual applicant's ability to fulfill the terms of the transaction if such methods are utilized in the same fashion to determine all applicant's eligibility for credit and are not designed to contravene, nor have the effect of contravening, the intent of this article.

Section 3-47 – Housing and commercial space.

(a) Generally. It shall be a discriminatory practice to do any of the following acts for a reason wholly or partially based on discrimination:

(1) To refuse to negotiate for, enter into, or perform any sale, exchange or lease of any real property; or to require different terms for such transaction or to represent falsely that an interest in real property is not available for inspection, purchase, sale, exchange, lease or occupancy when in fact it is so available.

(2) To include in the terms or conditions of a transaction in real property, any clause, condition or restriction.

(3) To refuse to lend money, guarantee a loan, accept a deed of trust or mortgage, or otherwise refuse to make funds available for the purchase, acquisition, construction, alteration, rehabilitation, repair or maintenance of real property; or impose different conditions on such financing; or refuse to provide title or other insurance, relating to the ownership or use of any interest in real property.

(4) To refuse or restrict facilities, service, repairs or improvements for a tenant or lessee.

(5) To make, print or publish, or to cause to be made, printed or published any notice, statement or advertisement, with respect to a transaction, or proposed transaction, in real property, or financing related thereto, which notice, statement or advertisement indicates or attempts to indicate any preference or limitation.

(6) To discriminate in any financial transaction involving real property on account of the location of the residence or business, a practice commonly referred to as "red lining."

(7) To refuse examination of copies of any listing of real property.

(8) To enter into a listing agreement which prohibits the inspection, sale, exchange, lease or occupancy of real property.

(9) To act or undertake to act, in any capacity, in a transaction in which a person knows that a violation of this article has occurred or will occur.

(10) To purchase, sell, exchange, lease or occupy real property, or authorize and direct one in his/her employment or on his/her behalf to do so, or solicit another person to do so, for the specific reason and intention of preventing another person or persons from transacting the same.

(11) To refuse to negotiate for, enter into or perform any sale, exchange or lease of any real property because of discrimination against any party to the transaction, any member of the family of any such party, any person using or occupying or intending to use or occupy the real property or any person using or occupying any real property in the area in which such real property is located.

(12) To refuse to permit, at the expense of a person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises; except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before modifications to the extent necessary for future reasonable use of persons without disabilities, reasonable wear and tear excepted. The landlord may not increase for disabled persons any customarily required security deposit. Where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for the restorations at the end of the tenancy, the landlord may negotiate as a part of such a restoration agreement a provision requiring that the tenant pay a reasonable amount of money not to exceed that cost of the restoration. The landlord shall only collect restoration money for actual costs incurred in the restoration. The landlord may condition permission for a modification on the renter providing a reasonable description of the proposed modification as well as reasonable assurances that the work will be done in a workman-like manner and that any required building permits will be obtained;

(13) To refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling.

(b) Blockbusting and steering. It shall be a discriminatory practice for any person, whether or not acting for monetary gain, directly or indirectly to engage in the practice of "blockbusting" or "steering", including, but not limited to, the committing of any one or more of the following acts:

(1) To promote, induce, influence, or attempt to promote,

induce or influence a transaction in real property through any representation, means or device whatsoever calculated to induce a person to discriminate or to engage in such transaction wholly or partially in response to discrimination, prejudice, fear or unrest adduced by such means, device or representation.

(2) To place a sign or display any other device either purporting to offer or tending to lead to the belief that an offer is being made for a transaction in real property that is not in fact available or offered for transaction, or which purports that any transaction in real property has occurred that in fact has not.

(3) To represent that a change has occurred, will occur or may occur with respect to the composition of the owners or occupants in any block, neighborhood or area in which real property, which is the subject of a real estate transaction, is located if such representation is based on discrimination.

(4) To represent that a change with respect to the composition of the owners or occupants in any block, neighborhood or area will result in a lowering of property values, in an increase in criminal or anti-social behavior, or in a decline in the quality of schools in such block, neighborhood or area if such representation is based on discrimination.

(c) Signs, notices, publications. It shall be a discriminatory practice for any person to do any of the following acts for a reason wholly or partially based on discrimination:

(1) To post or erect or cause or permit any person to post or erect any sign or notice upon any real property, managed by or in the custody, care or control of such person, indicating an intent to sell or lease any real property in a manner that is unlawful under this article.

(2) To publish or circulate, or cause or permit any person to publish or circulate, a statement, advertisement or notice of an intention to sell or lease any real property in a manner that is unlawful under this article.

(d) Exceptions:

(1) Nothing in this article shall require the owner to offer real property to the public at large before selling, exchanging or leasing it, provided that the owner complies with all other provisions of this article.

(2) Nothing in this article shall be construed to apply to the rental or leasing of housing accommodations in that portion of a building in which the owner, or members of his or her family, occupy one of the living units and in which the owner-occupant anticipates the necessity of sharing a kitchen or bathroom with a prospective tenant, not related to the owner-occupant.

(3) The provisions of this article shall not be so construed as to prohibit a person from inquiring into and reporting upon the qualifications of any prospective buyer or tenant with respect to limitations or exclusions other than those based on discrimination.

(4) Nothing in this article is intended to prohibit any person from giving preference in renting or leasing housing, or any part thereof, to elderly and/or disabled persons, or both to elderly and to disabled when the building is either constructed or remodeled to make provision for the needs of elderly and/or disabled. Evidence of such provision includes but is not limited to, ramps; doorway provisions; bathroom equipment, such as shower seats; grab bars; hardware, such as door levers in place of doorknobs, adaptable kitchen appliances, and/or other services meeting the needs of its residents.

Sections 48-50 Reserved.

Article VI - COMPLAINT PROCEDURES

Sec. 3-50. - Filing of complaints.

- (a) Any individual who believes that he or she has been aggrieved by a discriminatory practice may file a complaint with the City. The City shall keep records of all complaints made.
- (b) All complaints shall be filed within ninety (90) days of the occurrence of the alleged discriminatory practice, or ninety (90) days after the discovery thereof, but in no event shall a complaint be filed more than one (1) year after the occurrence of the discriminatory practice.
- (c) The Committee shall maintain record of all complaints received and compile data on such complaints so as to identify the type, frequency, and/or level of any discriminatory practices which may be occurring in the City of Portage.
- (d) Upon receipt of a complaint, the City Attorney may direct the complainant to an external governmental agency, either State or Federal, which may be charged with investigating and resolving the type of discriminatory practice complained of.

Secs. 51-59 Reserved.

ARTICLE VII. - ADMINISTRATION

Sec. 3-64. – Education and Outreach.

- (a) As the purpose of this Chapter is to educate and inform residents and business owners alike as to the prohibition of discriminatory practices, information about this Chapter shall be posted on the City's internet website including procedures for filing a complaint with the City. Additionally, any newsletter of general interest which is published by the City and distributed to its residents shall include information about this Chapter.

Sec. 3-65. – Annual review.

- (a) At least once annually, the Common Council shall receive a report from the Committee as to its activities and any complaints received. The Council may consider from time to time amendments to this Chapter to respond to discriminatory practices reported to the Committee.

Sec. 3-66. - Exceptions.

- (a) Any practice or act of discrimination which would otherwise be prohibited by this article shall not be deemed a discriminatory practice if it can be established that such practice or act can be justified on the basis of being reasonably necessary to the normal operation of the business or enterprise.
- (b) Nothing contained in the provisions of this article shall be construed to bar any religious or political organization from giving preference to persons of the same political or religious persuasion in the conducting of the said organizations' religious or political activities, except that activities of these organizations that are

government funded or offered to the public are prohibited from discriminating.

(c) Nothing contained in the provisions of this article shall be considered to be discriminatory on the basis of age if the act occurs with respect to a person under the age of eighteen (18).

(d) The provisions of this article shall not apply to other units of government, including the Federal government or any of its agencies, the State of Indiana and any other political subdivision, municipal corporation or their agencies.

Secs. 3-67—3-99. - Reserved.

Section 2. Conflicting Ordinances. Any Ordinance or provision of any Ordinance of the City of Portage or of the Municipal code of the City of Portage in conflict with the provisions of this Ordinance is hereby repealed.

Section 3. Severability. The invalidity of any section, clause, sentence or provision of this Ordinance shall not affect the validity of any other part of this Ordinance which can be given effect without such invalid part or parts.

Section 4. Effective Date. This Ordinance shall be in full force and effect from and after its passage and approval by the Mayor of the City of Portage and publication as required by law.

PASSED AND ADOPTED by the Common Council of the City of Portage, Porter County, Indiana, on the ____ day of _____, 2017.

Mark Oprisko, Presiding Officer

ATTEST:

Christopher D. Stidham, Clerk-Treasurer

Presented by me to the Mayor of the City of Portage, Porter County, Indiana, this ____ day of _____, 2017.

Treasurer

Christopher D. Stidham, Clerk-

Approved by me, the Mayor of the City of Portage, Porter County, Indiana, this ____ day of _____, 2017.

James E. Snyder, Mayor