

ORDINANCE NO. 5039

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, AMENDING THE CODE OF THE CITY OF CHANDLER, BY ADDING CHAPTER 63 NON-DISCRIMINATION, ADOPTING PROVISIONS CODIFYING DIVERSITY, EQUITY, AND INCLUSION IN THE PROVISION OF PUBLIC ACCOMMODATIONS, EMPLOYMENT, AND HOUSING IN THE CITY OF CHANDLER; DECLARING IT TO BE A PUBLIC RECORD; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR PENALTIES.

WHEREAS, the City of Chandler is a diverse, equitable and inclusive community, including diversity among its residents in race, color, ethnicity, national origin, sex, religion, age, sexual orientation, gender identity, veteran status, disability, marital status, and familial status; and

WHEREAS, all members of the community have the right to be treated fairly and live their lives with dignity, free from discrimination or disparate treatment; and

WHEREAS, the City of Chandler is committed to practicing equality in its practices and governance through its actions, processes, and decisions; and

WHEREAS, the City of Chandler is committed to serve all members of the community, protect their basic human rights, and ensure the safety and well-being of its residents; and

WHEREAS, the inclusion and integration of all residents of the City is a vital concern for the general welfare of the City.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Chandler, Arizona, as follows:

Section 1. That certain document known as “Chandler Embracing Diversity, Equity, and Inclusion Ordinance,” one paper copy and one electronic copy of which shall remain on file in the office of the City Clerk, is hereby declared to be a public record.

Section 2. That the Chandler City Code is hereby amended by addition of Chapter 63 Non-discrimination as set forth in “Chandler Embracing Diversity, Equity, and Inclusion Ordinance,” said document having been declared a public record.

Section 3. Providing for Repeal of Conflicting Ordinances.
All ordinances or parts of ordinances in conflict with the provisions of this ordinance, or any parts hereof, are hereby repealed.

Section 4. Providing for Severability.
If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

Section 5. Providing for Penalties.

A violation of this ordinance by any business shall render it ineligible for a contract or grant from the City of Chandler.

INTRODUCED AND TENTATIVELY APPROVED by the City Council of the City of Chandler, Arizona this 10 day of November, 2022.

ATTEST:

Dana R. DiLong
City Clerk

Kevin Hartke
Mayor Kevin Hartke

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona this 5 day of December, 2022.

ATTEST:

Dana R. DiLong
City Clerk

Kevin Hartke
Mayor Kevin Hartke

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Ordinance No. 5039 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the 5 day of December, 2022, and that a quorum was present thereat.

Dana R. DiLong
CITY CLERK

APPROVE AS TO FORM:

Kelly Schwab
CITY ATTORNEY



Published: in the Arizona Republic on: December 16, and December 23, 2022.

REFERENCED EXHIBIT(S) AND/OR ATTACHMENT(S) ON FILE AT THE CITY CLERK'S OFFICE.

Chandler Embracing Diversity, Equity, and Inclusion Ordinance
Chandler City Code Amendments – Chapter 63 Non-Discrimination
Public Record for Ordinance No. 5039

The Chandler City Code is hereby amended by adding **Chapter 63 NON-DISCRIMINATION** to the Chandler City Code as follows:

ARTICLE I. - DIVERSITY, EQUITY, AND INCLUSION IN CITY SERVICES, PROGRAMS, ACTIVITIES, AND CONTRACTING

63-1. - Establishment of Diversity, Equity, And Inclusion Policy.

It is the policy of the City to provide equal opportunity to all persons regardless of actual or perceived race, color, religion, sex, ethnicity, national origin, age, sexual orientation, gender identity, veteran status, disability, marital status, or familial status in the access, provision, and treatment of city services, programs, activities, and contracting. It is the policy of the City that all persons be treated with respect and dignity. Each person has the right to receive services from the City in a manner that promotes equality under the law and prohibits unlawful discrimination, including harassment and retaliation.

63-2. - Prohibited Practices.

The following shall constitute a violation of this article:

- A. For any elected or appointed official, employee, volunteer, contractor, vendor, or consultant to discriminate against any person in the access, provision, and treatment of city services, programs, activities, and contracting, including to restrict or refuse access because of actual or perceived race, color, religion, sex, age, disability, ethnicity, national origin, sexual orientation, gender identity, veteran status, marital status, or familial status.
- B. For any elected or appointed official, employee, volunteer, contractor, vendor, or consultant because of actual or perceived race, color, religion, sex, age, disability, ethnicity, national origin, sexual orientation, gender identity, veteran status, marital status, or familial status to refuse to hire, or employ, or bar, or discharge from employment any person, or to discriminate against such person in compensation, conditions, or privileges of employment.
- C. For any elected or appointed official, employee, volunteer, contractor, vendor, or consultant to coerce, intimidate, threaten, or interfere with any person in the exercise and enjoyment of, or on account of, any aid or encouragement of any right granted or protected under this article.
- D. For any elected or appointed official, employee, volunteer, contractor, vendor, or consultant 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 of disputes.

63-3. - Reporting an Incident of Harassment, Discrimination, or Retaliation; Investigation.

The City encourages reporting of all perceived incidents of discrimination, harassment, or retaliation, regardless of the offender's identity or position. The City encourages individuals who believe they are being subjected to such conduct to promptly advise the offender that his or her behavior is unwelcome and to request that it be discontinued. The City recognizes, however, that an individual may prefer to pursue the matter through complaint procedures. Complaints that state a violation of this article will be investigated promptly. A complaint that an elected or appointed official has violated this article may be made to the City Attorney or designee. A complaint that a contractor, vendor, or consultant has violated this article may be made to the Purchasing Manager or if the complaint is against a Chandler-based contractor, vendor or consultant, it may be filed under section 3-17 of this Code. Complaints shall be made by the person whose rights under this article were allegedly violated. The investigation may include individual interviews with the parties involved and, where necessary, with individuals who may have observed the alleged conduct or may have other relevant knowledge. The City will maintain confidentiality throughout the investigatory process to the extent consistent with adequate investigation and appropriate corrective action, and to the extent allowed by law.

63-4. - Disciplinary Action.

Misconduct constituting discrimination, harassment, or retaliation will be dealt with appropriately. For elected and appointed officials, a finding that a violation of this policy has occurred will be considered in the same manner as a violation of the Anti-Harassment and Anti-Bullying Policy. Any disciplinary action taken against a contractor, vendor, or consultant may result in rendering that contractor, vendor, or consultant ineligible to do business with the City.

63-5. - Policy Education and Training.

The City will make every reasonable effort to ensure that all concerned are familiar with these policies and are aware that any complaint in violation of such policies will be investigated and resolved appropriately. Any person who has questions or concerns about these policies should contact the applicable person identified in section 63-3.

63-6. - Exclusions.

Notwithstanding any other provision herein, nothing in this article is intended to alter or abridge other rights, protections, or privileges secured under state or federal law. This article shall be construed and applied in a manner consistent with First Amendment jurisprudence regarding freedom of speech, freedom of association and exercise of religion.

63-7. - No Separate Cause of Action.

Nothing in this article creates a separate cause of action or imposes legal liability against the City or any other individual or business entity in regard to violation of this article.

ARTICLE II. DIVERSITY, EQUITY, AND INCLUSION IN EMPLOYMENT, PUBLIC ACCOMMODATIONS, AND HOUSING

63-8. - Policy Declaration.

It is the policy of the City to prohibit discrimination due to actual or perceived race, color, religion, sex, age, disability, ethnicity, national origin, sexual orientation, gender identity, veteran status, marital status, and familial status in employment, places of public accommodation, and housing.

63-9. - Definitions Applicable to the Chapter.

In this chapter, unless the context otherwise requires:

- A. *Age* means at least forty (40) years of age.
- B. *Contractor* means any person who has a contract with the City of Chandler.
- C. *Disability* means:
 - 1. A physical or mental impairment that substantially limits one or more major life activities;
 - 2. A record of such an impairment; or
 - 3. Being regarded as having such an impairment.

Disability does not include the current illegal use of or addiction to a controlled substance or the current use of alcohol that prevents an individual from performing the duties of the job in question or whose employment, by reason of such current alcohol use, would constitute a direct threat to the property or the safety of others.

Discrimination on the basis of disability shall be interpreted in a manner consistent with the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*

D. *Discriminate or discrimination* means to engage in or make, directly or indirectly, any act, policy or practice that unfavorably subjects any person to different or separate treatment on the basis of actual or perceived race, color, religion, sex, age, disability, ethnicity, national origin, sexual orientation, gender identity, veteran status, marital status, or familial status. Discriminate or discrimination also includes unfavorable different or separate treatment of a person based on the person's association with someone of a certain race, color, religion, sex, age, disability, ethnicity, national origin, sexual orientation, gender identity, veteran status, marital status, or familial status.

E. *Discriminate because of sex* includes discrimination based on actual or perceived gender, pregnancy, childbirth, or related medical conditions.

F. *Discrimination complaint administrator* means the person designated by the City Manager to investigate a complaint under this article.

- G. *Dwelling* means:
 - 1. Any building, structure or part of a building or structure that is occupied as, or designed or intended for occupancy as, a residence by one or more families;

2. Any vacant land that is offered for sale or lease for the construction or location of a building, structure or part of building or structure described by subsection (1) of this definition.

H. *Employee* means an individual employed for pay to perform services for an employer and whose job-related activities are controlled and directed by the employer for whom services are being performed.

I. *Employer* means any person employing six (6) or more employees in the City of Chandler in each of twenty (20) or more calendar weeks in the current or preceding calendar year, and includes any agent of such person.

J. *Employment agency* means any person regularly undertaking, with or without compensation, to procure, recruit, refer or place employees with an employer.

K. *Familial status* means a person is:

1. Pregnant;
2. A parent or other person having legal custody or who is in the process of securing legal custody of one or more individuals who are younger than 18 years and who are domiciled with such person;
3. The designee of such parent or other person having legal custody as described in subsection (2) with the written permission of the parent or other person.

L. *Gender identity* means an individual's actual or perceived gender-related identity, regardless of whether the identity is or is perceived to be different than the identity traditionally associated with the sex assigned to the individual at birth.

M. *Marital status* means the status of a person being unmarried, married, separated, widowed, or divorced.

N. *Person* means one or more individuals, partnerships, associations or corporations, legal representatives, trustees, receivers, or other organized groups of persons.

O. *Place of public accommodation* means facilities, establishments, accommodations, services or commodities offered to or enjoyed by the general public, including but not limited to public places where food or beverages are sold, public places operated for temporary lodging or for the benefit, use or accommodation of those seeking health or recreation and all establishments offering services, facilities, or goods to members of the general public or supported by government funds. Any dwelling, private club, or place which is in its nature distinctly private is not a place of public accommodation.

P. *Religion* means all aspects of religious observance and practice, as well as belief. Discrimination on the basis of religion does not include a situation where an employer demonstrates that the employer is unable to reasonably accommodate an employee's or

prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

Q. *Religious organization* means a religious corporation, association or society or a school, college, university, or other educational institution or institution of learning if the institution is in whole or substantial part controlled, managed, owned, or supported by a religious corporation, association or society, or the curriculum of the institution is directed toward the propagation of a religion.

R. *Sexual orientation* means an individual's actual or perceived heterosexuality, homosexuality, or bisexuality.

S. *Small business* means a business with five (5) or fewer employees.

63-10. - Prohibited Acts.

It is a violation of this article:

A. For any owner, operator, lessee, manager, agent, or employee of any place of public accommodation to discriminate against any person, or directly or indirectly display, circulate, publicize or mail any advertisement, notice or communication which states or implies that any facility or service will be refused or restricted because of actual or perceived race, color, religion, sex, age, disability, ethnicity, national origin, sexual orientation, gender identity, veteran status, marital status, or familial status or that any person, because of actual or perceived race, color, religion, sex, age, disability, ethnicity, national origin, sexual orientation, gender identity, veteran status, marital status, or familial status would be unwelcome, objectionable, unacceptable or undesirable.

B. For an employer, because of actual or perceived race, color, religion, sex, age, disability, ethnicity, national origin, sexual orientation, gender identity, veteran status, marital status, or familial status to refuse to hire or employ any person or to bar or discharge from employment such person, or to discriminate against such person in compensation or in terms, conditions, or privileges of employment. Nothing in this subsection shall be interpreted to require that a less qualified person be preferred over a better qualified person because of actual or perceived race, color, religion, sex, age, disability, ethnicity, national origin, sexual orientation, gender identity, veteran status, marital status, or familial status.

C. For any employer or employment agency to print or circulate, or cause to be printed or circulated, any publication, or to use any form of application for employment, or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification or discrimination as to race, color, religion, sex, age, disability, ethnicity, national origin, sexual orientation, gender identity, veteran status, marital status, or familial status, or expresses any intent to make any such limitation, specification, or discrimination.

D. For any employer, labor organization, or employment agency to discharge, expel, or otherwise discriminate against any person because such person has opposed in a lawful manner

any practices prohibited under this article, or because he or she has filed a complaint, testified or assisted in any proceeding under this article.

E. For any person to cause or attempt to cause an employer to discriminate against an individual in violation of this article.

F. For any person to aid, abet, incite, compel, or coerce the doing of any of the acts prohibited under this article or to attempt to do so.

G. For any person to discriminate in places of public accommodation or employment against any person, because that person has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this article.

H. For any owner or lessor to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities therewith, or to refuse to negotiate for the sale or rental because of race, color, religion, sex, age, disability, ethnicity, national origin, sexual orientation, gender identity, veteran status, marital status, or familial status.

1. This subsection shall not exclude or deny housing designated for senior living or for individuals with disabilities, or as otherwise designated or directed by the United States Department of Housing and Urban Development or the State of Arizona.

2. This subsection shall not apply to the rental of rooms within a single residential dwelling or single residential lot (such as accessory dwelling units or duplexes) if the owner or lessor resides therein or thereon.

63-11. - Exemptions.

A. This article shall not apply to any establishment operated by a bona fide private membership club that is exempt from taxation under sections 501(c)(3) and 501(c)(7) of the Internal Revenue Code not conducted for the purpose of evading this article, when the accommodations, advantages, facilities, and services are restricted to members of such club and their guests.

B. This article shall not apply to the United States government, any of its departments or agencies, or any corporation wholly owned by it; a federally recognized American Indian tribe; or the State of Arizona or any of its departments, agencies, or political subdivisions.

C. This chapter shall not apply to small businesses.

D. This article shall not apply to any person who violates any policy or regulation of any place of public accommodation that applies to all persons, regardless of race, color, religion, sex, age, disability, ethnicity, national origin, sexual orientation, gender identity, veteran status, marital status, or familial status. Any such person may be excluded without penalty under this article from any such place of public accommodation, and nothing in this article shall be considered to limit such right of exclusion.

E. Notwithstanding any other provision of this article, the prohibitions concerning marital status, sexual orientation, or gender identity shall not apply to bona fide religious organizations or persons who hold bona fide religious views. The provisions of this section prohibiting discrimination on the basis of marital status, sexual orientation, or gender identity shall not be construed to prohibit or prevent any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised, or controlled by or in connection with a religious organization, from taking any action which is calculated by the organization to promote the religious principles for which it is established or maintained.

F. Notwithstanding any other provisions of this article, the prohibitions concerning disability shall not require modifications:

1. That would create an undue burden or are otherwise not easily accomplished and able to be carried out without significant difficulty or expense;
2. That would fundamentally alter the nature of the goods or services provided by the public accommodation; or
3. That would pose a direct threat to the health or safety of others that cannot be mitigated by the appropriate modifications in the public accommodation's policies or procedures.

G. This article does not apply to employment by the City of Chandler. Discrimination against city employees is prohibited by City of Chandler Personnel Rules and Administrative Regulations.

H. Notwithstanding any other provision in this article, it shall not be a violation of this article:

1. For an employer, or employment agency to prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;
2. For an employer, or employment agency to require that employees not be under the influence of alcohol or engage in the use of potentially impairing drugs while at work;
3. For an employer, or employment agency to require that employees comply with the requirements established under the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701 *et seq.*) or the drug testing provisions of state law (A.R.S. § 23-493 *et seq.*);
4. For an employer, or employment agency to hold an employee who engages in the use of potentially impairing drugs or who is an alcoholic to the same standards for employment, job performance, and behavior to which such entity holds other employees;
5. For a place of public accommodation to afford beneficial pricing or policies to senior citizens, students, veterans, or individuals with disabilities;
6. For an employer to establish a legitimate dress code that is applied uniformly to all employees within certain job categories and is reasonably related to the employer's business needs.

63-12. - Violation; Procedure; Penalties.

Enforcement against violators of this article shall consist of education and any business found to violate this article shall not be eligible for contracts or grants from the City.

63-13. - Complaint Procedures.

A. Any person claiming to be aggrieved by an alleged violation of this article or article III (hereinafter the “complainant”) may file with the City Clerk a verified charge, in writing, within ninety (90) calendar days after the alleged violation occurred. The charge shall set forth the facts upon which it is based, shall identify the person charged (hereinafter the “respondent”), and shall be signed by the complainant.

B. Within forty-five (45) days following receipt of the charge from the complainant, the discrimination complaint administrator, in consultation with the City Attorney or designee, shall conduct an initial screening of the charge to determine whether the City has jurisdiction over the charge, whether the charge was timely filed, and whether the allegations, if true, would constitute a violation.

C. If the charge is within the jurisdiction of a federal or state agency, the discrimination complaint administrator shall refer the complainant to the appropriate public agency. The complainant shall be responsible for filing the charge within the time frames set out in federal or state law and the City shall take no further action regarding the charge.

D. If the criteria in subsection (B) are met, the discrimination complaint administrator shall furnish the respondent with a copy of the charge via certified first class, or registered United States mail. The respondent shall file, not later than twenty (20) days following the date the charge is mailed to the respondent, a written verified answer to the charge.

E. If the discrimination complaint administrator determines that the City does not have jurisdiction, the charge is untimely, or the allegations would be insufficient to show a violation, the discrimination complaint administrator shall dismiss the charge as not warranting further action or investigation by the City. The decision to dismiss a charge is final. The discrimination complaint administrator shall provide the complainant, the respondent, and the City Attorney with written findings concerning the determination to dismiss the charge.

F. If the discrimination complaint administrator makes an initial determination that the City has jurisdiction over the charge, the charge was timely filed and the allegations, if true, would constitute a violation, the discrimination complaint administrator may offer mediation services to the complainant and respondent in an attempt to resolve the matter.

G. Any failure by the charging party to timely respond or take action as requested by the City may be considered withdrawal of the complaint.

H. If mediation is not successful in resolving the charge or if mediation does not occur, the discrimination complaint administrator shall determine whether the facts support a finding that a violation has occurred. If the discrimination complaint administrator determines that a violation did not occur, the discrimination complaint administrator shall issue a determination that the charge is unfounded and the matter will be considered closed. If the discrimination complaint administrator determines that there is cause to believe that a violation did occur, the discrimination

complaint administrator shall refer the matter to the City Attorney or designee for a determination as to whether to proceed with enforcement.

63-14. - No Private Right of Action; Effect of Federal and State Laws.

This article does not create a private cause of action, nor does it create any right or remedy that is the same or substantially equivalent to the remedies provided under federal or state law. Nothing in this article shall supersede federal or state law.