

**CHAPTER 11 – HUMAN RIGHTS**

[Derivation: Ord. No.: 03-20, Effective: November 20, 2005]

**SUBCHAPTER I – GENERAL PROVISIONS**

**SECTION 11-101     PURPOSE**

The State of Maine Human Rights Act [5 MRSA § 4552 et seq.] prohibits discrimination on account of age, race, color, sex, marital status, religion, ancestry, or national origin, but does not prohibit discrimination on account of sexual orientation. This Chapter 11 is to protect the public health, safety and welfare and to better ensure the basic human right to a life with dignity, it is declared the policy of the City of Hallowell to correct and to prevent discrimination in employment, housing, access to public accommodations, and the extension of credit, on account of a person's sexual orientation.

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**SUBCHAPTER II – DEFINITIONS**

**SECTION 11-201**     COMMON MEANING OF WORDS

Unless otherwise apparent or defined, all words in this Chapter shall have their common meaning.

**SECTION 11-202**     SPECIAL DEFINITIONS

As used in this Chapter, unless the context indicates otherwise, the following words shall have the following meanings:

1.     Application for credit. Any communication, oral or written, by a person to a creditor requesting an extension of credit to that person or to any other person, and includes any procedure involving the renewal or alteration of credit privileges or the changing of the name of the person to whom credit is extended.
2.     Credit. The right granted by a creditor to a person to defer payment of debt or to incur debt and defer its payment, or purchase property or services and defer payment therefor.
3.     Credit sale. Any transaction with respect to which credit is granted or arranged by the seller. The term includes any contract in the form of a bailment or, lease if bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the property and services involved, and it is agreed that the bailee or lessee will become the owner of the property upon full compliance with his or her obligations under the contract.
4.     Credit transaction. Any invitation to apply for credit, application for credit, extension of credit or credit sale.
5.     Creditor. Any person who regularly extends or arranges for the extension of credit for which the payment of a finance charge or interest is required, whether in connection with loans, sale of property or services or otherwise.
6.     Discriminate. Includes, without limitation, "segregate" or "separate".
7.     Employee. An individual employed by an employer, but not including any individual employed by his/her parents, spouse or child.
8.     Employer. Any person in this City employing any number of employees, whatever the place of employment of the employees, and any person outside the City of Hallowell employing any number of employees whose usual place of employment is within this City; any person acting in the interest of any employer, directly or indirectly; and labor organizations, whether or not organized on a religious, fraternal or sectarian basis, with respect to their employment of employees. "Employer" does not include a religious or fraternal corporation or association, not organized for private profit and in

fact not conducted for private profit, with respect to employment of its members of the same religion, sect or fraternity.

9. Employment agency. Any person undertaking with or without compensation to procure opportunities to work, or to procure, recruit, refer or place employees. It includes, without limitation, placement services, training schools and centers, and labor organizations, to the extent that they act as employee referral sources; and it includes any agent of such person.
10. Extension of credit. Any acts incident to the evaluation of an application for credit and the granting of credit.
11. Housing accommodation. Any building or structure or portion thereof, or any parcel of land, developed or undeveloped, which is occupied, or is intended to be occupied or to be developed or to be developed for occupancy, for residential purposes, excepting: a) an owner-occupied dwelling of up to four (4) dwelling units; b) the rental of not more than four (4) rooms of a one-family dwelling that is occupied by the owner; or c) the rental of any dwelling owned, controlled or operated for other than commercial purpose, by a religious corporation to its membership, unless such membership is restricted on account of sexual orientation.
12. Invitation to apply for credit. Any communication, oral or written, by a creditor which encourages or prompts an application for credit.
13. Owner-occupied. Property that is the primary physical residence of the owner.
14. Person. One or more individuals, partnerships, associations, organizations, corporations, municipal corporations, legal representatives, trustees, trustees in bankruptcy, receivers and other legal representatives, including the City of Hallowell and all agencies thereof.
15. Place of public accommodation. Any establishment operated by a public or private entity that in fact caters to, or offers its goods, facilities or services to, or solicits or accepts patronage from, the general public, regardless of where goods or services are provided. This definition shall be liberally construed to accomplish the purpose of the ordinance. The ordinance shall apply to the following establishments, which are included for the purpose of illustration only and not by way of limitation:
  - A. An inn, hotel, motel or other place of lodging, whether conducted for the entertainment or accommodation of transient guests or of those seeking health, recreation or rest;
  - B. A restaurant, eating house, bar, tavern, buffet, saloon, soda fountain, ice cream parlor or other establishment serving or selling food or drink;
  - C. A motion picture house, theater, concert hall, stadium, roof garden, or other place of exhibition or entertainment;

- D. An auditorium, convention center, lecture hall or other place of public gathering;
  - E. A bakery, grocery store, clothing store, hardware store, shopping center, garage, gasoline station or other sales or rental establishment;
  - F. A laundromat, dry cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, dispensary, clinic, bathhouse or other service establishment;
  - G. All public conveyances operated on land or water or in the air as well as a terminal, depot or other station used for specified public transportation;
  - H. A museum, library, gallery or other place or public display or collection;
  - I. A park, zoo, amusement park, race course, skating rink, fair, bowling alley, golf course or club, gymnasium, health spa, shooting gallery, billiard or pool parlor, swimming pool, boardwalk or other place of recreation, exercise or health;
  - J. A nursery, elementary, secondary, undergraduate or postgraduate school or other place of education;
  - K. A daycare center, senior citizen center, homeless shelter, food bank, adoption agency or other social service center establishment;
  - L. Public elevators of buildings occupied by 2 or more tenants or by the owner and one or more tenants;
  - M. A municipal building, city hall or other or other establishment of the State or local government; and
  - N. When a place of public accommodation is located in a private residence, the portion of the residence used exclusively as a residence is not covered by this chapter, but that portion used exclusively in the operation of the place of public accommodation or that portion used both for the place of public accommodation and for the residential purposes is covered by this chapter. The covered portion of the residence extends to those elements used to enter the place of public accommodation, and those exterior and interior portions of the residence available to or used by customers or clients, including rest rooms.
16. Real estate broker and real estate salesman. All persons meeting the definition of Section 4001 (2) and (3) of Title 32 of the Maine Revised Statutes Annotated, whether or not they are licensed or required to be licensed.

17. Sexual orientation. Having a preference or orientation for, being identified as having a preference or orientation for, or having a history of a preference or orientation for, heterosexuality, homosexuality, or bisexuality. Sexual orientation refers to a person's actual or perceived status, condition, or actual or perceived gender identity or expression.

**SUBCHAPTER III – TYPES OF DISCRIMINATION**

**SECTION 11-301     EMPLOYMENT DISCRIMINATION**

It shall be unlawful employment discrimination, in violation of this Chapter, except where based on a bona fide occupational qualification:

1. For any employer to fail or refuse to hire or otherwise discriminate against any applicant for employment because of sexual orientation; or because of such reason, to discharge an employee, or to discriminate with respect to hire, tenure, promotion, transfer, compensation, terms, conditions or privileges of employment, or any other matter directly or indirectly related to employment; or in recruiting of individuals for employment or in hiring them; to utilize any employment agency which such employer knows, or has reasonable cause to know, discriminates against individuals because of their sexual orientation.
2. For any employment agency to fail or refuse to classify properly or refer for employment or otherwise discriminate against any individual because of sexual orientation, or to comply with an employer's request for the referral of job applicants, if such request indicates whether directly or indirectly that such employer will not afford full and equal employment opportunities to individuals regardless of their sexual orientation.
3. For any labor organization to exclude from apprenticeship or membership, or to deny full and equal membership rights, to any applicant for membership, because of sexual orientation, or because of such reason to deny a member full and equal membership rights, expel from membership, penalize or otherwise discriminate in any manner with respect to hire, tenure, promotion, transfer, compensation, terms, conditions or privileges of employment, representation, grievances or any other matter directly or indirectly related to membership or employment, whether or not authorized or required by the constitution or bylaws of such labor organization or by a collective labor agreement or other contract, or to fail or refuse to classify properly or refer for employment, or otherwise to discriminate against any member because of such sexual orientation, or to cause or attempt to cause an employer to discriminate against an individual in violation of this Chapter.
4. For any employer or employment agency or labor organization, prior to employment or admission to membership of any individual, to:
  - A. Elicit or attempt to elicit any information directly or indirectly pertaining to sexual orientation except where some privileged information is necessary for an employment agency or labor organization to make a suitable job referral;
  - B. Make or keep a record of sexual orientation;
  - C. Use any form of application for employment or personnel or membership blank containing questions or entries directly or indirectly pertaining to sexual

orientation;

- D. Print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specification or discrimination based upon sexual orientation;
  - E. Establish, announce or follow a policy of denying or limiting, through quota system or otherwise, employment or membership opportunities of any group because of sexual orientation; or
5. For an employer or employment agency or labor organization to discriminate in any manner against any individual because they have opposed any practice which would be a violation of the article, or because they have made a charge, testified or assisted in any manner in any investigation, proceeding or hearing under this Chapter.

**SECTION 11-302     NOT EMPLOYMENT DISCRIMINATION**

It shall not be unlawful employment discrimination under this Chapter:

- 1. Records. After employment or admission to membership, to make a record of such features of an individual as are needed in good faith for the purpose of identifying them, provided such record is intended and used in good faith solely for such identification, and not the purpose of discrimination in violation of this Chapter.
- 2. Required records. To record any data required by law, or by the rules and regulations of any state or federal agency, provided such records are kept in good faith for the purpose of complying with law, and are not used for the purpose of discrimination in violation of this Chapter.

**SECTION 11-303     UNLAWFUL HOUSING DISCRIMINATION**

It shall be unlawful housing discrimination, in violation of this Chapter:

- 1. For any owner, lessee, sublessee, managing agent or other person having the right to sell, rent, lease or manage a housing accommodation, or any agent of these to make or cause to be made any written or oral inquiry concerning the sexual orientation of any prospective purchaser, occupant or tenant of such housing accommodation; or to refuse to show or refuse to sell, rent lease, let or otherwise deny to or withhold from any individual such housing accommodation because of sexual orientation of such individual; or to issue any advertisement relating to the sale, rental or lease of such housing accommodation which indicates any preference, limitation, specification or discrimination based upon sexual orientation; or to discriminate against any individual because of sexual orientation in the price, terms, conditions or privileges of the sale, rental or lease of any such housing accommodations or in the furnishing of facilities or services in connection therewith,

or to evict or attempt to evict any tenant of any housing accommodation because of sexual orientation;

2. For any real estate broker or real estate sales person, or agent of one of them to fail or refuse to show any applicant for a housing accommodation any such accommodation listed for sale, lease or rental, because of sexual orientation of such applicant or of any intended occupant of such accommodation, or to misrepresent for the purpose of discriminating on account of sexual orientation of such applicant or intended occupant the availability or asking price of a housing accommodation listed for sale, lease or rental; or for such a reason to fail to communicate to the person having the right to sell or lease such housing accommodation any offer for the same made by any applicant thereof; or in any other manner to discriminate against any applicant for housing because of sexual orientation of such applicant or of any intended occupant of the housing accommodation, or to make or cause to be made any written or oral inquiry or record concerning the sexual orientation of any such applicant or intended occupant, or to accept for listing any housing accommodation when the person having the right to sell or lease the same has directly or indirectly indicated an intention of discriminating among prospective tenants or purchasers on the ground of their sexual orientation, or when he knows or has reason to know that the person having the right to sell or lease such housing accommodation has made a practice of such discrimination; or
3. For any person to whom application is made for a loan or the form of financial assistance for the acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation, whether secured or unsecured, or agent of such person, to make or cause to be made any oral or written inquiry concerning the sexual orientation of any individual seeking such financial assistance, or of existing or prospective occupants or tenants of such housing accommodations; or to discriminate in the granting of such financial assistance, or in the term, conditions or privileges relating to the obtaining or use of any such financial assistance, against any applicant because of the sexual orientation of such applicant or of the existing or prospective occupants or tenants.

**SECTION 11-304     NOT HOUSING DISCRIMINATION**

With respect to housing, nothing in this Chapter shall be construed in any manner to prohibit or limit the exercise of the privilege of every person and the agent of any person having the right to sell, rent, lease or manage a housing accommodation, to set up and enforce specifications in the selling, renting, leasing or letting thereof or in the furnishing of facilities or services in connection therewith which are not based on the sexual orientation of any prospective or actual purchaser, lessee, tenant or occupant thereof. Nothing in this Chapter shall be construed in any manner to prohibit or limit the exercise of the privilege of every person and the agent of any person making loans for or offering financial assistance in the acquisition, construction, rehabilitation, repair or maintenance of housing accommodations to set standards and preferences, terms, conditions, limitations or specifications for the granting of such loans or financial assistance which are not based on the sexual orientation of any existing or prospective owner, lessee, tenant or occupant of such housing accommodation.

**SECTION 11-305     UNLAWFUL PUBLIC ACCOMMODATIONS**

It shall be unlawful public accommodation discrimination, in violation of this Chapter:

1. For any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, to directly or indirectly refuse, withhold from or deny to any person, on account of sexual orientation, any of the accommodations, advantages, facilities or privileges of such place of public accommodation, or for such reason in any manner to discriminate against any person in the price, terms or conditions upon which access to such accommodations, advantages, facilities and privileges may depend; or
  
2. For any person to directly or indirectly publish, circulate, issue, display, post or mail any written, printed, painted or broadcast communications, notice or advertisement, to the effect that any of the accommodations, advantages, facilities and privileges of any place of public accommodation shall be refused, withheld from or denied to any person on account of sexual orientation, or that the patronage or custom thereof of any person belonging to or purporting to be of any particular sexual orientation is unwelcome, objectionable or not acceptable, desired or solicited, or that the clientele thereof is restricted to members of particular sexual orientation. The production of any such written, printed, painted or broadcast communication, notice or advertisement, purporting to relate to any such place, shall be presumptive evidence in any action that the same was authorized by its owner, manager or proprietor.

**SECTION 11-306     UNLAWFUL CREDIT EXTENSION DISCRIMINATION**

It shall be unlawful credit discrimination for any creditor to refuse the extension of credit to any person solely on the basis of sexual orientation in any credit transaction. It shall not be unlawful credit discrimination to comply with the terms and conditions of any bona fide group credit life, accident and health insurance plan, for a financial institution extending credit to a married person to require both the husband and the wife to sign a note and mortgage and to deny credit to persons under the age of 18 or to consider a person's age in determining the terms upon which credit will be extended.

**SUBSECTION IV – ENFORCEMENT**

**SECTION 11-401     ENFORCEMENT BY CIVIL ACTION**

A violation of this Chapter shall be a civil infraction and shall be enforceable in the Maine Superior Court in a civil action. Within the time limited, a person who has been subject to unlawful discrimination may file a civil action in the Superior Court against the person or persons who committed the unlawful discrimination.

**SECTION 11-402     TIME**

The action shall be commenced not more than two years after the unlawful act complained of.

**SECTION 11-403     BURDEN OF PROOF**

In any civil action under this Chapter, the burden shall be on the person seeking relief to prove, by a fair preponderance of the evidence, that the alleged unlawful discrimination occurred.

**SECTION 11-404     RELIEF**

In any action filed under this Chapter, by any person:

1. If the Court finds that unlawful discrimination has occurred, its judgment shall specify an appropriate remedy or remedies therefor. These may include, but are not limited to:
  - A. An order to cease and desist from the unlawful practices specified in the order;
  - B. An order to employ or reinstate a victim of unlawful employment discrimination, with or without back pay;
  - C. An order to accept or reinstate such a person in a union;
  - D. A temporary order enjoining the sale or rental to others of the housing accommodations as to which the violation allegedly occurred, or against the sale or rental of a single housing accommodation substantially identical thereto and controlled by the alleged violator, when it appears probable that the plaintiff will succeed upon final disposition of the case. Such relief shall be liberally granted in the interests of furthering the purposes of this Chapter;
  - E. An order to rent or sell a specified housing accommodation, or one substantially identical thereto, if controlled by the respondent, to a victim of unlawful housing discrimination

- F. An order requiring the disclosure of the locations and descriptions of all housing accommodations which the violator has the right to sell, rent, lease or manage;
  - G. An order to pay the victims of unlawful price discrimination three (3) times the amount of any excessive price demanded and paid by reason of such unlawful discrimination; and
  - H. An order to pay to the Complainant civil penal damages of One Thousand Dollars (\$1,000.00) in the case of the initial violation; Twenty Five Hundred Dollars (\$2,500.00) for the second order issued under this article; and a minimum of Five Thousand Dollars (\$5,000.00), up to a maximum of Fifty Thousand Dollars (\$50,000.00), for a third and subsequent violation by the respondent.
2. The Court, in its discretion, may allow the prevailing party reasonable attorney's fees and costs.

**SUBSECTION V – EXEPTIONS**

**SECTION 11-501**    EXCEPTIONS

In addition to the other exceptions provided in this article, this article does not:

1.     Require the teaching of any particular subject in the public schools;
2.     Require any form of affirmative action, quotas, or preferential treatment based on sexual orientation.

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