

CHAPTER 97 HUMAN RIGHTS

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97.005. Policy. It is the policy of the City of Salem to eliminate discrimination based on race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, gender identity and source of income. The City Council finds that such discrimination poses a threat to the health, safety and general welfare of the citizens of Salem and menaces the institutions and foundation of our community. Furthermore, the City Council finds that although the State of Oregon generally prohibits discrimination in employment, housing, and public accommodation on the basis of race, religion, color, sex, marital status, familial status, national origin, age, and disability, the State does not generally prohibit such discrimination on the basis of sexual orientation, gender identity, domestic partnership, or source of income. It is the intent of the Council to supplement the state protections against discrimination. Furthermore, 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. (Ord No. 36-2002)

97.010. Definitions. As used in this chapter, except where the context otherwise requires:

- (a) **“Age”** means age 18 or older.
- (b) **“Agent”** means any person (not an employee or officer), who is an agent of a public body for purposes of the Tort Claims Act, if that person meets the usual “control” tests with respect to the manner of performance of duties, or if that person performs a function or responsibility of the City of Salem on behalf of the City. A person is not an agent if he or she merely performs a service without supervision or control for the City and not on its behalf.
- (c) **“Domestic partnership”** means a relationship between two persons who meet either of the following requirements: (1) have registered, certified or affirmed their relationship with any appropriate, legally established domestic partnership registry within any jurisdiction in the United States, or with the State of Oregon’s Public Employees Benefits Board; or (2) are 18 years of age or older; are each unmarried; are each other’s sole domestic partner and intend to remain so indefinitely; are not related by blood closer than would bar marriage in the State of Oregon; and are residing together, share the common necessities of life and are responsible for each other’s common welfare.

(d) "**Employer**" means any person, wherever situated, who employs one or more employees within the city, or who solicits individuals within the city to apply for employment, whether privately or by general advertisement.

(e) "**Gender identity**" means a person's actual or perceived sex, including a person's identity, appearance, expression, or behavior with respect to actual or perceived sex, whether or not that identity, appearance, expression or behavior is different from that traditionally associated with the person's sex at birth.

(f) "**Person**" means an individual, partnership, association, organization, corporation, board, commission, or other organized and identifiable group. "Person" includes a public body as that term is defined by ORS 30.260(4) other than the State of Oregon or a county.

(g) "**Registered volunteer**" is a person who donates labor or services to the City under the supervision of an employee of the City of Salem and performs a function or responsibility of the City on behalf of the City.

(h) "**Sexual orientation**" means actual or perceived heterosexuality, homosexuality, or bisexuality.

(i) "**Source of income**" refers to the means by which a person supports himself or herself and any 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.

(j) "**Vocational school**" means any person who trains and teaches individuals to engage in any trade, business, or vocational pursuit.

(k) Any term used but not defined in Chapter 97 shall be interpreted consistently with definitions provided in Oregon Revised Statutes, Chapter 659A (2001). (Ord No. 60-72; Ord No. 59-75; Ord No. 239-78; Ord No. 93-90; Ord No. 46-96; Ord No. 36-2002)

97.020. Unlawful Employment Practices. It shall be an unlawful employment practice:

(a) For any employer to discriminate on the basis of an individual's race, religion, color, sex, national origin, marital status, age, disability, sexual orientation, gender identity, source of income, domestic partnership or familial status, by committing against any such individual any of the acts made unlawful under ORS 659A.006(2), 659A.030, 659A.100 to 659A.139, 659A.142(1) or 659A.142(2); and

(b) For any vocational school to discriminate because of race, religion, color, sex, national origin, marital status, age, disability, sexual orientation, gender identity, source of income, domestic partnership or familial status, against any individual in its admission or other operating procedures and practices relating to students or prospective students. (Ord No. 60-72; Ord No. 239-78; Ord No. 36-2002)

97.040. Unlawful Housing Practices. It shall be unlawful housing practice for a person to discriminate in selling, renting, or leasing real property on the basis of an individual's race, religion, color, sex, national origin, marital status, age, disability, sexual orientation, gender identity, source of income, domestic partnership or familial status, by committing against any such individual any of the acts made unlawful under ORS 659A.145 or 659A.421. (Ord No. 60-72; Ord No. 239-78; Ord No. 36-2002)

97.060. Unlawful Public Accommodations Practices. It shall be an unlawful public accommodations practice for a person to discriminate on the basis of an individual's race, religion, color, sex, national origin, marital status, age, disability, sexual orientation, gender identity, source of income, domestic partnership or familial status, by committing against any such individual any of the acts made unlawful under ORS 659A.142(3) or ORS 659A.400 to 659A.409. (Ord No. 60-72; Ord No. 239-78; Ord No. 36-2002)

97.080. Intimidation. It shall be unlawful for any person to commit any of the following acts:

- (a) Tamper or interfere with property, with the intent to cause substantial inconvenience to another, because of the person's perception of the other's race, color, religion, national origin, familial status, age, marital status, domestic partnership, disability, sexual orientation, gender identity or source of income.
 - (b) Intentionally, knowingly or recklessly subject another to offensive physical contact because of the person's perception of the other's race, color, religion, national origin, familial status, age, marital status, domestic partnership, disability, sexual orientation, gender identity or source of income.
 - (c) Intentionally, knowingly or recklessly publicly insult another by abusive words or gestures in a manner likely to provoke a violent response because of the person's perception of the other's race, color, religion, national origin, familial status, age, marital status, domestic partnership, disability, sexual orientation, gender identity or source of income.
 - (d) Intentionally, knowingly or recklessly, because of the persons's perception of race, color, religion, national origin, familial status, age, marital status, domestic partnership, disability, sexual orientation, gender identity or source of income, subject another to alarm by threatening:
 - (1) To inflict physical injury upon or commit a crime affecting that other person, or member of that other person's family.
 - (2) To cause damage to the property of that other person or member of that other person's family.
 - (e) Willfully violate a court order issued under SRC 97.090, or of an order issued by any court of competent jurisdiction under an equivalent statute or ordinance.
- For the purposes of SRC 97.080, "property" means any tangible personal property or real property. (Ord No. 16-90; Ord No. 36-2002)

97.085. Exceptions.

- (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 the leasing or renting of dwellings with not more than two individual living units where one of the units is owner occupied;
 - (3) To the leasing or renting of 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 by 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 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.

The exceptions in paragraphs (1) and (2) of this subsection do not excuse a failure to provide reasonable and appropriate accommodations permitting all persons access to restrooms consistent with their expressed gender.

(d) The prohibitions in section 97.040 against discriminating on the basis of age do not apply to housing for older persons, as defined in ORS 659A.421(7)(b) and (c).

(e) The prohibitions in section 97.060 against discriminating on the basis of age or familial status do not apply to the use of special rates or services or to the promotion of business through the issuance of special rates for families with children, or persons 55 years of age or older.

(f) The prohibitions contained in Chapter 97 shall not mandate or otherwise affect the scope or content of medical insurance or other forms of medical or health benefits provided by employers. (Ord No. 36-2002)

97.090. Disregarding Court Orders.

(a) When any person is charged with violating SRC 97.080 is released from custody before trial by bail or personal recognizance, the Salem Municipal Court judge authorizing the release shall require that the person:

(1) Stay at least one hundred yards away from the home, school, business or place of employment of the victim or victims of the alleged offense or other location, as shall be specifically named by the court in the order.

(2) Refrain from contacting, intimidating, threatening, or otherwise interfering with the victim or victims of the alleged offense and such other persons, including but not limited to members of the family or household of the victim, as shall be specifically named by the court in the order.

(3) The court shall determine the necessity for imposing a no-contact order or other conditions of pre-trial release. The Salem Police Department and Salem Municipal Court may enforce this section as it relates to orders restricting the defendant's ability to have contact with the victims or others.

(b) The victim shall be informed by local law enforcement agencies or the prosecuting attorney of the final disposition of the case in which the victim is involved. If a defendant is found guilty of a crime of intimidation and a condition of the sentence restricts the defendant's ability to have contact with the victim or witnesses, the condition shall be recorded and a written certified copy of that order shall be provided to the victim or witnesses by the clerk of the court. The written order shall contain the court's directives and shall bear the legend: Violation of this order is criminal offense under SRC 97.080 and will subject a violator to arrest. (Ord No. 16-90; Ord No. 36-2002)

97.100. Severability. If any section, portion, clause or phrase of SRC Chapter 97 is held to be invalid or unconstitutional, the remaining sections, portions, clauses and phrases shall not be affected but shall remain in full force and effect. (Ord No. 16-90; Ord No. 36-2002)

97.860. Action Upon Complaints.

(a) Upon receiving a complaint of a possible violation of the provisions of Chapter 97 of this Code, the Commission shall provide information to the complainant concerning options to resolve the complaint, including but not limited to the provisions of this section and referral to governmental officers or bodies with authority over the complaint.

(b) If the complaint is not referred to a governmental officer or body under subsection (a) of this section or withdrawn by the complainant, the commission shall determine if the complaint is timely under SRC 97.880 and has a reasonable basis.

(c) If the complaint is timely under SRC 97.880 and has a reasonable basis, the Commission shall attempt to resolve the complaint through informal means, including but not limited to fact-finding, mediation and discussion with all parties concerning the complaint. "Fact-finding" means identification of the major issues in the particular dispute by one or more commissioners or other impartial individuals who review the positions of the parties, resolve factual differences and make recommendations for settlement of the dispute.

(d) If informal resolution of the complaint under subsection (c) of this section is not achieved, the Commission shall refer the matter to the City Attorney for determination as to whether a complaint for an infraction or crime should be issued in Municipal Court. (Ord No. 60-72; Ord No. 40-76; Ord No. 61-93; Ord No. 42-09)

97.870. Duties of the City Attorney. In addition to giving legal advice and counsel to the commission, and prosecuting on behalf of the city all criminal complaints filed in municipal court, the city attorney shall review any case which comes before him or her involving possible violations of chapter 97 of this Code, and shall, determine whether a complaint for an infraction or crime should issue in municipal court. (Ord No. 60-72; Ord No. 61-93; Ord No. 42-09)

97.880. Limitations on Actions Upon Complaints. The commission shall dismiss any complaint concerning an alleged violation of the provisions of chapter 97 of this Code where such violation is found to have been committed more than one year prior to the receipt of the complaint by the commission. (Ord No. 60-72; Ord No. 61-93; Ord No. 42-09)

97.890. Conflicts With State Agencies. The commission shall, upon learning that there is a proceeding pending before any state court or administrative agency or tribunal having jurisdiction to administer or enforce the provisions of ORS chapter 659, regardless of when such proceeding was commenced, abate any matter before the commission involving the same subject matter and parties and forward to the appropriate officer of such court, agency, or tribunal a full report of the matter by the commission. The commission shall then furnish whatever assistance and cooperation may be requested by the state officer. (Ord No. 60-72; Ord No. 61-93; Ord No. 42-09)

97.900. Administration and Enforcement.

(a) Nothing in this section shall be construed as barring or preventing direct prosecution of a criminal violation of this Chapter, or as requiring that a criminal violation be investigated or heard before the Human Rights and Relations Advisory Commission, as provided in SRC 97.860-97.990.

(b) Claims against City.

(1) Any person who claims discrimination by the City in violation of this Chapter may file a complaint with the Commission under SRC 97.860 only after exhausting all other administrative remedies provided by the City pursuant to contract, rule, or policy. If a claim is filed prior to exhaustion of available City administrative remedies, the Commission shall inform the person of those remedies and forward the complaint to the appropriate City official to address it.

(2) Any claim against the City filed with the Commission by a City employee, registered volunteer or agent shall be subject to the additional requirements of subsection (d) of this section.

(3) If the Commission takes action under SRC 97.860(a)-(c) based on a claim alleging discrimination against the City and an informal resolution is not thereby achieved, the Commission shall refer the complaint to the City Manager for a determination whether the complaint should be forwarded to the Bureau of Labor and Industries, which shall act as the City's enforcement agent.

(c) Claims by City employees, registered volunteers, or agents against City.

- (1) Any employee, registered volunteer, or agent of the City who claims discrimination by the City in violation of this Chapter may file a complaint with the Commission under SRC 97.860. Such complaint may be filed only after all applicable internal grievance processes have been followed and completed. If the complaining party files a complaint upon the completion of those internal processes, the Commission's actions shall be limited to SRC 97.860(a)-(c), subject to the conditions in paragraphs 2 through 5 below.
- (2) The Commission shall take no action on the complaint if the party:
- (A) Has proceeded to arbitration pursuant to a collective bargaining agreement between a labor organization and the City;
 - (B) Has filed with the Bureau of Labor and Industries ("BOLI") a claim under ORS Chapter 659A concerning the same event or set of circumstances that form the basis of the claim under this Section, and BOLI has accepted jurisdiction on that claim; or
 - (C) Has filed a civil complaint in state or federal court against the City or any of its employees, agents or registered volunteers based on the same event or set of circumstances that form the basis of the claim under this section.
- (3) The Commission shall take action on the complaint as provided in SRC 97.860(a)-(c) if the party has not taken any of the steps listed in paragraph (2) of this subsection, or if BOLI or the court has dismissed the claim on procedural grounds.
- (4) The Commission shall stay its action on the complaint if, subsequent to the filing of the complaint, the complaining party files a BOLI claim or civil complaint based on the same event or circumstances that form the basis of the claim under this section. It shall resume its action if the BOLI claim or civil complaint is dismissed on procedural grounds.
- (5) The Commission shall dismiss the complaint if, subsequent to the filing of the complaint, the complaining party files a BOLI claim or civil complaint based on the same event or circumstances that form the basis of the claim under this section, and that claim proceeds to a final order, other than a dismissal on procedural grounds.
- (d) Private cause of action.
- (1) Any person who claims to be aggrieved by an unlawful discriminatory act listed below shall have a cause of action in any court of competent jurisdiction:
- (A) An unlawful employment practice based on sexual orientation, gender identity, source of income, familial status, or domestic partnership;
 - (B) An unlawful housing practice based on sexual orientation, gender identity, or domestic partnership; or
 - (C) An unlawful public accommodations practice based on sexual orientation, gender identity, source of income, domestic partnership or familial status.
- (2) A cause of action filed pursuant to this subsection shall be subject to the following limitations:
- (A) The civil action must be commenced within one year after the occurrence of the unlawful practice, or within ninety days after the close of the last administrative action, whichever is later.
 - (B) The court may order any injunctive relief and such other equitable relief as may be appropriate, and compensatory and punitive damages.
 - (C) The court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal.
 - (D) In any action under SRC 97.020, the court may order reinstatement or hiring of employees with or without back pay, subject to the time limitations provided in ORS 659A.885(1).
- (e) If a complaint is filed with the Commission alleging discrimination based on a claim not listed in subparagraphs (e)(1)(A)-(C) of this section, then notwithstanding SRC 97.860-97.890, the Commission shall not refer a complaint to the City Attorney's office. Instead, if the Commission

is unable to resolve such a complaint, the complaint shall be referred to the appropriate state agency. (Ord No. 60-72; Ord No. 36-2002; Ord No. 42-09)

97.910. Engaging in Reprisal or Retaliation.

(a) It shall be unlawful for any person to in any manner discriminate against, penalize, or harass as defined by ORS 166.065, any person who has been a witness for, filed a complaint with, or otherwise participated in any matter before the commission concerning an alleged violation of the provisions of this chapter.

(b) It shall not be a defense to prosecution for violation of this section that the matter before the commission has not yet proceeded to final determination before the commission, or that the matter has been dismissed by the commission, or that a criminal or infraction complaint has been dismissed or the defendant or respondent found not guilty or not responsible by any court having jurisdiction thereof. (Ord No. 60-72; Ord No. 61-93)

97.990. Violations. Knowing and willful violation of SRC 97.010 to 97.890 is an infraction; save and except that violation of SRC 97.080 is a misdemeanor. (Ord No. 60-72; Ord No. 193-79; Ord No. 16-90)