



# TOWN COUNCIL WORKSHOP AGENDA DOCUMENTATION

**PREPARATION DATE:** May 16, 2018

**MEETING DATE:** May 21, 2108

**SUBMITTING DEPARTMENT:** Legal

**DEPARTMENT DIRECTOR:** Audrey Cohen-Davis

**PRESENTER:** Audrey Cohen-Davis, Town Attorney

**SUBJECT:** Non-Discrimination Ordinance

## STATEMENT/PURPOSE

The purpose of this workshop item is to receive direction from the Town Council on moving forward with a non-discrimination ordinance in the workplace, housing and public accommodations in general related to sexual orientation and gender identity or expression.

## DESIRED OUTCOME

The desired outcome for this item is to receive Council direction on whether to move forward with a non-discrimination ordinance and to receive feedback on the attached draft non-discrimination ordinance.

## BACKGROUND/ALTERNATIVES

On December 7, 2015, the Town Council approved Resolution 15-26 supporting non-discrimination in the Town of Jackson.

At the December 4, 2017 Town Council meeting, Mayor Muldoon asked Town Council if there was interest in directing staff to draft a non-discrimination ordinance for review. A motion was made by Jim Stanford and seconded by Hailey Morton Levinson to direct staff to bring back at a future workshop a discussion for a non-discrimination ordinance and to discuss any associated legal issues or constraints. staff's understanding of the Mayor's goals for such an ordinance is to prohibit discrimination in employment, places of public accommodation (restaurants, bars, other businesses, etc.), and housing, as well as providing a procedure for the investigation and enforcement of complaints and violations. Issues the Mayor and Council may want to consider include: 1. Potential fiscal impacts of an ordinance, including the cost of implementing this ordinance, legal challenges and the addition of staff in order to enforce this law. 2. Adding this ordinance to staff's workload at this time. 3. Potential legal challenges to an ordinance. 4. Potential staff impacts in terms of resources, finances, and bandwidth with regard to investigating complaints and enforcing the law over the long-term (including impacts on the Administration Department, Municipal Court, Legal Department, and Human Resources).

Research indicates the following cities in Wyoming have taken the following actions (in descending chronological order):

- Casper – Adopted a Non-Discrimination Resolution (February, 2018)
- Sheridan – Adopted a Non-Discrimination Resolution (October, 2017)
- Cheyenne – Adopted a Non-Discrimination Resolution (October, 2016)
- Gillette – Adopted a Non-Discrimination Resolution (September, 2016)
- Jackson – Adopted a Non-Discrimination Resolution (December, 2015)
- Laramie – Enacted a Non-Discrimination Ordinance (May, 2015)

At the March 19, 2018 workshop the Town Council passed a motion “to direct staff to bring back an ordinance dealing with antidiscrimination in the workplace, housing and public accommodations in general, including sexual orientation and gender identity, and to bring back an outline of staff and fiscal costs at a future workshop.” As such, a draft ordinance is attached hereto for review and consideration by the Town Council.

There are a number of decisions for the Town Council regarding the attached draft non-discrimination ordinance:

1. **Section I, subsection .010 -- Legislative Findings:** These are legislative findings drafted based upon the Town Council meetings in this matter and the Town Attorney’s understanding of what is of utmost importance or interest for the Town Council. The Town Council needs to affirm the language as stated and may edit, remove, or add any findings it deems necessary.
2. **Section I, subsection .020 -- Declaration of Policy, Purpose and Intent:** As with the legislative findings, this declaration of policy, purpose and intent is drafted based upon the Town Council meetings in this matter and the Town Attorney’s understanding of what is of utmost importance or interest for the Town Council. The Town Council needs to affirm the language as stated and may edit, remove, or add any findings it deems necessary.
3. **Section I, subsection 030.C – Definition of “Housing Facility or Housing Accommodation”:** The exact definition of a housing facility or housing accommodation may still need to be fleshed out with the Planning department, but on initial review is acceptable.
4. **Section I, subsection .030.G – Definition of “Employer”:** The definition of Employer is drafted in the attached to include any person or entity doing business who employs one (1) or more employees. If the Town Council would like to make this “two or more” employees to avoid mom and pop businesses, it can certainly do so.
5. **Section I, subsection .100 – Discriminatory Effects:** Under discriminatory effects, the term “bona fide business necessity” will be tied to/defined according to the ADA definition.
6. **Section I, subsection .120 -- Violation and Civil Remedy:** An option 1 and an Option 2 has been set forth for a potential process. This will require further discussion and drafting if the Town Council chooses to move forward with this Ordinance.

The Town Council has many options to consider for moving forward, several of those are listed below:

1. Direct the Town Attorney to finalize the attached non-discrimination ordinance based upon the discussion and direction today for first reading at a future Town Council meeting.  
Continue Town Council discussion on this issue at the next available workshop prior to ordinance adoption.
3. Take no action, leaving the current Resolution 15-26 in place.
4. Other.

#### [ALIGNMENT WITH COUNCIL’S STRATEGIC INTENT](#)

Part of the mission of the Town of Jackson is to provide municipal services that support the community and enhance the quality of life for residents and guests. Providing equal access and protection for all is inherent in providing municipal services. The Town of Jackson has internal employment and personnel policies that include protections for sexual orientation and gender identity.

## STAKEHOLDER ANALYSIS

Should an ordinance be added to a future Town Council meeting for consideration, the stakeholder is the public at large. This includes a wide swath of the community, such as those protected by the ordinance, businesses required to evaluate their employment practices and/or procedures, those providing places of public accommodation and housing, houses of worship, Town staff involved with researching, drafting, and enforcing the ordinance, and members of the larger Lesbian, Gay, Bisexual, Transgender (LGBT) community.

## FISCAL IMPACT

Depending on the decisions by the Town Council, fiscal impacts may include the cost of an investigator (potentially a contract or town employee), cost of processing of complaints, and cost to prosecute such complaints. The fiscal impact associated with adoption and codification of any non-discrimination ordinance includes the potential for challenges to the ordinance and costs associated with defending any challenge. The fiscal impact of passage of this ordinance after third reading varies between \$250 and \$700 depending on the length of the ordinance. (Shorter ordinances average around \$350 and short franchise ordinances can reach \$700.)

## STAFF IMPACT

Staff impact on the Legal Department has been researching and drafting a legally-sound ordinance. Significant additional staff impact will occur to enforce such an ordinance. Additional staff impacts would need to be addressed once the content of an ordinance is finalized. The ordinance may include a complaint process that impacts various departments including Administration (investigating and processing the complaint), Legal (prosecuting the complaint), Municipal Court (adjudicating the complaint), Finance (addressing issues associated with the business license for the business in question), Police (investigation and citations).

The staff impact of passage of this ordinance after third reading is notable in the Town Clerk's office and involves preparing the ordinance for advertising and sending to the newspaper, updating the Jackson Municipal Code online and in hard copy for those receiving hard copy versions of the code. The ordinance is also printed and signed and placed in the permanent record storage book in the vault and indexed and posted on the website. The ordinance is also prepared and sent to the newspaper for advertising. Should an ordinance be passed and then challenged, this would also involve significant time on the part of the Legal Department, the Town Clerk Department, and other Town departments in terms of defense, document production, etc.

## LEGAL ISSUES

Ongoing. Currently, the State of Wyoming has not promulgated legislation creating a protected class for sexual orientation and/or gender identity.

## ATTACHMENTS

Draft Ordinance regarding non-discrimination.

## RECOMMENDATION

Staff makes no recommendation at this time.

## SUGGESTED MOTIONS

The Town has several options available to it and suggested motions are as follows:

1. I move to direct the Town Attorney to finalize the attached non-discrimination ordinance based upon the discussion and direction today for first reading at a future Town Council meeting.
  2. I move to continue Council discussion on this issue at the next available workshop prior to ordinance presentation.
  3. I move to take no action, leaving the current Resolution 15-26 in place.
  4. Other.
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AN ORDINANCE ESTABLISHING CHAPTER \_\_\_\_ TO THE TOWN OF JACKSON MUNICIPAL CODE REGARDING NON-DISCRIMINATION; AND PROVIDING FOR AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF JACKSON, WYOMING, IN REGULAR SESSION DULY ASSEMBLED THAT:

**SECTION I.**

Chapter \_\_ of the Municipal Code of the Town of Jackson, is hereby created to read as follows:

**CHAPTER X.XX ILLEGAL DISCRIMINATION**

**X.XX.010 Legislative Findings**

A. The Town of Jackson ("Town") is composed of and welcomes diverse individuals, groups, and communities;

B. The Town values this diversity and needs to encourage and allow all residents and visitors to contribute to the commercial life and activities of Jackson, and to the cultural and social life of the Town;

C. Discrimination and discriminatory practices based on sexual orientation or gender identity or expression inhibit and restrict the economic growth and opportunities of Jackson and its citizens and its visitors, and the general cultural, social and commercial activities and life of the Town;

D. Prohibition of discrimination will attract new residents and businesses to the Town, will encourage visitors and tourists to the Town, and is necessary to raise and maximize revenue for the Town, in order that the Town may provide more and better services and amenities to insure the growth and acceptable quality of life of the Town;

E. Discrimination disturbs or jeopardizes the public health, safety and welfare of the Town;

F. The Town has received public testimony and written complaints reporting instances in discrimination.

G. Although state and federal laws have been enacted to eliminate discrimination in employment, housing, and public accommodations on the basis of race, creed, religion, color, sex, physical or mental disability, age and national origin, the Town finds that existing state and federal laws do not adequately address all discriminatory acts reported by the Town's diverse residents, including lesbian, gay, bisexual, and transgender individuals within the Town that have not attained equal opportunity in housing, public accommodations, and employment. A barrier to the advancement of lesbian, gay, bisexual, and transgender individuals in their personal and professional lives within the Town is the potential discriminatory practices of employers and providers of public accommodations and housing on the basis of actual or perceived sexual orientation and gender identity or expression, and thus the Town deems it necessary to adopt local regulations adapted to the needs of its citizens.

H. While the vast majority of employers, housing providers, and places of public accommodation within the Town do not discriminate on the basis of actual or perceived sexual

orientation and gender identity or expression, evidence of discriminatory practices exists within the Town making it difficult for some lesbian, gay, bisexual, or transgender individuals to find satisfactory housing, obtain employment, and enjoy public accommodations free from discriminatory practices;

I. Discrimination on the basis of actual or perceived sexual orientation and gender identity or expression impacts many citizens of the Town and has an especially harmful impact to young residents and visitors to the Town who may be lesbian, gay, bisexual, or trans gender, because it may force them to move from the Town, and may impact their ability to fully and freely identify themselves as they seek employment, housing and the services and products provided by public accommodations;

J. Discrimination in employment has and will prevent the gainful employment of citizens of the city addressed by this article and may create breaches of the peace, impose added burdens upon the public for relief and welfare, and cause citizens, including youth, to seek employment elsewhere.

K. Discrimination in housing makes it difficult for persons addressed in this article to find housing in close proximity to urban services, educational facilities, in price ranges that are within their earning ability, and may cause citizens to seek housing outside of the city.

L. Discrimination in places of public accommodation is economically harmful to a prosperous community and is otherwise detrimental to the welfare and economic growth of the city and may cause citizens to seek public accommodations outside of the city.

M. Discrimination must be prohibited in order to protect the health, safety and welfare of the Town and to ensure the basic human rights of members of groups that have historically been subject to discrimination, including the right of such group members to live in peace where they wish;

N. The Town wishes to exercise its powers to the fullest extent allowed by the statutes of the State of Wyoming to prohibit and regulate discrimination; and

O. The Town wishes to exercise its power to the fullest extent allowed by the Constitution of the State of Wyoming to prohibit and regulate discrimination.

#### **X.XX.020 Declaration of Policy, Purpose and Intent.**

A. It is declared to be among the civil rights of the people of the Town of Jackson, Wyoming to be free from discrimination in public accommodations or employment, and for it to be contrary to the policy of the Town and unlawful to discriminate against any person because of sexual orientation or gender identity or expression in places of public accommodation and employment. It is also declared to be unlawful to retaliate against any person for making a complaint or assisting in an investigation or proceeding as set forth in this Chapter.

B. Consistent with the findings of the Town Council, it is the intent of the Town of Jackson that no person shall be denied his or her civil rights or discriminated against based upon his or her actual or perceived sexual orientation or gender identity or expression, as more specifically set out in this Chapter.

C. Consistent with the findings of the Town Council, and incorporating those findings, this Chapter is enacted to exercise, to the fullest extent allowed by Wyoming statutes and the Wyoming Constitution, the powers of the Town of Jackson to prohibit such discrimination in order to, without limitation, encourage the economic growth of the Town, raise revenue for the Town for the benefit of its residents, prevent activities that disturb or jeopardize the public health, safety, peace or morality of the Town, provide for the health, safety and welfare of the Town, and to generally encourage the growth and economic expansion of the Town, and the ability of its residents to fully participate in the cultural, social and economic life of the Town.

### **X.XX.030 Definitions.**

As used in this Chapter the following definitions apply:

A. **DISCRIMINATION, DISCRIMINATE OR DISCRIMINATORY:** Any act, policy or practice that has the effect of unfavorably subjecting any person to different or separate treatment because of his or her actual or perceived sexual orientation, gender identity or expression, or association with a person or group of people so identified, or on the belief that a person has a particular sexual orientation or gender identity or expression, even if that belief is incorrect.

B. **GENDER IDENTITY OR EXPRESSION:** An actual or perceived gender related identity, expression, or behavior, regardless of the individual's sex at birth.

C. **HOUSING FACILITY OR HOUSING ACCOMMODATION:** A building or portion of a building, whether constructed or to be constructed, that is or will be used as the home, domicile, residence, or sleeping quarters of its occupants.

D. **PERCEIVED:** Refers to the perception of the actor, and not to the perception of the person for or against whom the action is taken.

E. **PERSON:** One or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated employees' associations, employers, employment agencies, organizations, or labor organizations.

F. **PUBLIC ACCOMMODATION:** A place, including the Town and its agencies, however organized, offering services, facilities or goods to or soliciting patronage from members of the general public. This includes places of lodging, establishments serving food or drink, auditoriums and other places of public gathering, shopping facilities, medical and other professional service establishments, public transportation facilities, libraries and other professional service establishments, places of entertainment and recreation, daycare centers and other social service establishments and all places of education.

Public accommodation does not include an institution, club, or place of accommodation that proves that it is, by its nature, distinctly private. An institution, club, or place of accommodation may not be considered by its nature distinctly private if it has more than one hundred (100) members, provides regular meal service, and regularly receives payment for dues, fees, use of space, facilities, services, meals, or beverages, directly or indirectly, from or on behalf of nonmembers, for the furtherance of trade or business. For the purposes of this definition, any lodge of a recognized national fraternal organization is considered by its nature distinctly private.

G. SEXUAL ORIENTATION: Actual or perceived heterosexuality, bisexuality, or homosexuality.

H. EMPLOYER: Any person or entity doing business within the Town of Jackson who employs one (1) or more employees, and any agent of such person or entity, but, for purposes of this Chapter, the term does not include:

1. The United States or any department or agency thereof, a corporation wholly owned by the government of the United States or Indian Tribe;
2. The State of Wyoming or any department or agency thereof, including any political subdivision of the State;
3. a bona fide private membership club (other than a labor organization) which is exempt from taxation under the Internal Revenue Code of 1986; or,
4. a fraternal or religious association or corporation if the association or corporation is not organized either for private profit or to provide accommodations or services that are available on a non-membership basis.

**Section X.XX.040 Employment Discrimination Prohibited.**

A. It is a discriminatory or unfair employment practice and shall be unlawful:

- i. For an employer to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation or the terms, conditions or privileges of employment against a qualified person on the basis of sexual orientation or gender identity or expression;
- ii. For a person, an employer, an employment agency, a labor organization, or its employees or members, to discriminate in matters of employment or membership against any person, otherwise qualified, on the basis of sexual orientation or gender identity or expression;
- iii. For an employer to reduce the wage of any employee to comply with this Chapter.

B. Employer shall include the Town and its agencies.

**Section X.XX.050 Places of Public Accommodation; Discrimination Prohibited.**

All persons of good deportment are entitled to the full and equal enjoyment of all public accommodations, including accommodations, advantages, facilities and privileges of all places or agencies which are public in nature, or which invite the patronage of the public, including Town facilities and services, without any distinction, discrimination or restriction on account of sexual orientation or gender identity or expression.

**Section X.XX.060 Housing; Discrimination Prohibited.**

It shall be unlawful for any person, owner, manager, employee, or any entity whose business includes engaging in any residential real estate related transactions to discriminate on the account of sexual orientation or gender identity or expression in the sale, lease or rental of any housing facility, or to otherwise discriminate in the terms, conditions, maintenance, improvement, or repair of any housing facility. The rental of sleeping rooms in a private residence designed as a single dwelling unit in which the owner also resides is excluded from this section provided that the owner rents no more than two (2) sleeping rooms within the residence.

**Section X.XX.070 Other Prohibited Acts.**

- A. No person shall adopt, enforce or employ any policy or requirement, sign or notice which discriminates or indicates discrimination in providing housing, employment or public accommodations.
- B. No person shall discriminate in the publication or distribution of advertising material, information or solicitation regarding housing, employment or public accommodations.
- C. No agent, broker, labor union, employment agency or any other intermediary shall discriminate in making referrals, listings or providing information with regard to housing, employment or public accommodations.
- D. No person shall conspire with, assist or coerce another person to discriminate in any manner prohibited by this Chapter.

**Section X.XX.080 Retaliation.**

No person shall coerce, threaten, discharge, expel, blacklist, or otherwise retaliate against another person for opposing any practices prohibited by this Chapter, or making a complaint, or assisting in an investigation or proceeding regarding an alleged violation of this Chapter; nor shall any person require, request, conspire with, assist, or coerce another person to coerce, threaten, discharge, expel, blacklist or to retaliate against a person for making a complaint or assisting in an investigation or proceeding.

**Section X.XX.090 Discriminatory effects.**

No person shall adopt, enforce or employ any policy or requirement which has the effect of creating unequal opportunities according to actual or perceived sexual orientation or gender identity or expression, for an individual to obtain housing, employment or public accommodations, except for a bona fide business necessity. Such a necessity does not arise due to a mere inconvenience or because of suspected objection to such a person by neighbors, customers or other persons.

**Section X.XX.100 Exceptions.**

Notwithstanding anything contained in this Chapter, the following practices shall not be violations of this Chapter.

- (1) For a religious organization or institution to restrict any of its facilities of housing or accommodations which are operated as a direct part of religious activities to individuals of the denomination involved or to restrict employment opportunities for officers, religious instructors and clergy to individuals of that denomination.
- (2) For the owner of an owner-occupied one-family or two-family dwelling, or a housing facility or public accommodation facility, respectively, devoted entirely to the housing and accommodation of individuals of one sex, to restrict occupancy and use on the basis of sex.
- (3) To limit occupancy in a housing project or to provide public accommodations or employment privileges or assistance to individuals who are of low income, over 55 years of age or disabled, in circumstances in which such limitations are appropriately designated.

- (4) To engage in a bona fide effort to establish an affirmative action program to improve opportunities in employment for groups, including, but not limited to, minorities and women, where allowed or required by law.
- (5) To refuse to enter a contract with an unemancipated minor.
- (6) To refuse to admit to a place of public accommodation serving alcoholic beverages an individual under the legal age for purchasing alcoholic beverages.
- (7) To refuse to admit individuals under 18 years of age to a business providing entertainment or selling literature which the operator of said business deems unsuitable for minors.
- (8) For an educational institution to limit the use of its facilities to those affiliated with such institution.
- (9) To provide discounts on products and services to students, minors and senior citizens.
- (10) To discriminate in any arrangement for the sharing of a dwelling unit by an individual who is sharing the unit.
- (11) Nothing herein shall be construed to prohibit any affirmative action laws passed by any level of government. Preferential treatment of or benefits conferred on any of the classes protected from discrimination under this Chapter are permissible to the extent allowed by law.

#### **Section X.XX.110 First Amendment Rights.**

This ordinance fully acknowledges all rights guaranteed by the First Amendment of the United States Constitution.

#### **Section X.XX.120 Violation and Civil Remedy.**

##### **Option 1:**

A. It is intended that violations of this Chapter not specifically addressed by Wyoming State law are to be civil municipal ordinance violations intended to be enforceable through a criminal proceeding in the Town of Jackson Municipal Court.

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

- (1) 180 days of the last alleged violation,
- (2) 180 days of the conclusion of a grievance proceeding initiated by the complainant in accordance with a procedure as established by a contract, written rule or policy, or collective bargaining agreement, or
- (3) 300 days of the last alleged violation if a grievance proceeding initiated by the complainant in accordance with a procedure as established by a contract, written rule or policy, or collective bargaining agreement has not been completed within 120 days of initiation of the proceeding. The initiation of or the granting of relief under a grievance procedure shall not preclude or limit any other claims or remedies available under this

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

C. In instances where the Town of Jackson has found that the defendant in any civil proceeding pursuant to this Chapter has violated a section of the Chapter three or more times within a twelve (12) month time period, any fourth and subsequent violations during any twelve (12) month time period may also be charged and prosecuted as a misdemeanor violation.

Any person violating any of the provisions of this Chapter shall be deemed guilty of a misdemeanor and upon conviction thereof may be fined up to seven hundred and fifty dollars for each offense. Each day an offense exists shall constitute a separate and distinct offense. There shall be no imprisonment as a penalty for a violation of this Chapter.

## **OPTION 2**

### **Procedure for Filing Complaints.**

A. Any person who claims to have been injured by an unlawful employment practice, an unlawful housing practice or an unlawful public accommodation practice subject to the Town's jurisdiction under this Chapter may file a complaint with the Town Manager or his/her designee. A complaint must be filed within ninety (90) calendar days after an alleged violation under this Chapter has occurred.

B. A complaint must be in writing, made under oath or affirmation, and contain the following information:

- i. The Complainant's name, address, telephone number and signature;
- ii. The date the alleged unlawful employment practice, unlawful housing practice or an unlawful public accommodation practice occurred;
- iii. A statement of the facts upon which the allegation of an unlawful employment practice, unlawful housing practice or an unlawful public accommodation practice occurred;
- iv. The name of the alleged violator, or facts sufficient to identify such person ("Respondent"); and
- v. Whether a complaint concerning this same matter has been filed with another agency and the disposition of said complaint.

C. Upon receipt of the complaint, the Town Manager or his/her designee shall assign such complaint to a person or entity (the "Investigator") with the requisite knowledge, skills and expertise to further investigate the complaint as herein described. Such assignment will be made at the sole discretion of the Town Manager or his/her designee. In the event said complaint shall involve persons employed by the Town as the Respondent, the Investigator shall be an independent third party. In addition, internal disciplinary policies may apply to these instances.

D. Promptly upon receipt of the complaint from the Town Manager or his/her designee, the Investigator shall:

- i. Provide the Respondent named in the complaint written notice that a complaint alleging the commission of an unlawful employment practice, unlawful housing practice or unlawful public accommodation practice occurred has been filed against the Respondent;
- ii. Furnish a copy of the complaint to the Respondent; and
- iii. Advise the Respondent of the Respondent's procedural rights and obligations, including the right to file a written, signed, and verified informal answer to the complaint within fifteen (15) calendar days after service of notice of the complaint.

E. Not later than fifteen (15) calendar days after service of the notice and copy of the complaint, a Respondent may file an answer to the complaint. The answer must be in writing, made under oath or affirmation, and contain the following information:

- i. The Respondent's name, address, telephone number, and signature of the Respondent or the Respondent's attorney, if any; and
- ii. A concise statement of facts in response to the allegations in the complaint, including facts of any defense or exemption.

#### **Investigation.**

A. Upon receipt of the complaint, the Investigator shall commence an investigation to determine the facts behind the complaint and whether there is reasonable cause to believe the Respondent committed an unlawful employment practice, unlawful housing practice or unlawful public accommodation practice except that no investigation may commence if, after reviewing the allegations of the complaint, the Investigator determines that the complaint does not come within the scope of this Chapter. Upon determining that a particular complaint does not come within the scope of this Chapter, the Investigator shall dismiss the complaint, notify the Complainant and Respondent and take no further action.

B. In connection with any investigation of a complaint filed under this Chapter, the Investigator shall seek the voluntary cooperation of any person to:

- i. Obtain access to premises, records, documents, individuals, and any other possible source of information;
- ii. Examine, record and copy necessary materials; and
- ii. Take and record testimony or statements of any person reasonably necessary for the furtherance of the investigation.

C. The Investigator may in coordination with the Town Attorney issue subpoenas to compel the attendance of witnesses or the production of relevant materials or documents.

D. The Investigator may dismiss a complaint during the investigation and prior to referral to the Town Attorney if the Investigator determines that:

- i. The complaint was not filed within the required time period;
- ii. The location of the alleged unlawful employment practice or unlawful housing practice is not within the Town's jurisdiction;
- iii. The alleged unlawful unemployment practice or alleged unlawful housing practice is not a violation of this Chapter;
- iv. The Complainant refuses to cooperate with the Investigator in the investigation of the complaint or enforcement of an executed conciliation agreement;
- v. The Complainant cannot be located after the Investigator has performed a reasonable search; or
- vi. An agreement has been executed by the Complainant and Respondent.

### **Disposition of a Complaint.**

- A. If, upon completion of an investigation of a complaint, the Investigator determines that an unlawful employment practice, unlawful housing practice or unlawful public accommodation practice has occurred and is unable to secure an acceptable conciliation agreement from the Respondent, then the Investigator shall refer the case to the Town Attorney, who shall determine how best to pursue further action, if any, on the complaint.
- B. If the Town Attorney determines that cause exists to find that an unlawful employment practice, unlawful housing practice or unlawful public accommodation practice occurred and the facts are sufficient to warrant the initiation of an action.
- C. If the Town Attorney determines that cause exists to pursue a matter in municipal court, then the Town Attorney shall provide written notification to the Respondent and Complainant that an action to enforce this Chapter may be initiated in municipal court. If the Town Attorney determines that there is no cause that unlawful employment practice, unlawful housing practice or unlawful public accommodation practice occurred or that the facts are insufficient to warrant the initiation of an action in municipal court, the Town Attorney shall provide written notification to the Respondent and Complainant and shall then dismiss the complaint.

### **Section X.XX.130 Violation; Penalties**

Any violation of this Chapter shall be an offense punishable by a fine of up to \$750.00 per day per violation.

### **Section X.XX.140 Severability.**

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

**SECTION II.**

All ordinances and parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

**SECTION III.**

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of the ordinance.

**SECTION IV.**

This Ordinance shall become effective after its passage, approval and publication.

PASSED 1ST READING THE \_\_\_\_ DAY OF \_\_\_\_\_, 2018.

PASSED 2ND READING THE \_\_\_\_ DAY OF \_\_\_\_\_, 2018.

PASSED AND APPROVED THE \_\_\_\_ DAY OF \_\_\_\_\_, 2018.

TOWN OF JACKSON

BY: \_\_\_\_\_  
Pete Muldoon, Mayor

ATTEST:

BY: \_\_\_\_\_  
Sandy P. Birdyshaw, Town Clerk

ATTESTATION OF TOWN CLERK

STATE OF WYOMING     )  
  ) ss.  
COUNTY OF TETON     )

I hereby certify that the foregoing Ordinance No. \_\_\_\_ was duly published in the Jackson Hole News and Guide, a newspaper of general circulation published in the Town of Jackson, Wyoming, on the \_\_\_\_ day of \_\_\_\_\_, 2018.

I further certify that the foregoing Ordinance was duly recorded on page \_\_\_\_\_ of Book \_\_\_\_\_ of Ordinances of the Town of Jackson, Wyoming.

\_\_\_\_\_  
Sandy P. Birdyshaw  
Town Clerk

**From:** Andrew Munz  
**To:** [Town Council](#)  
**Subject:** In support of NDO  
**Date:** Saturday, May 19, 2018 12:18:14 PM

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Dear Jackson Town Council,

I am writing this e-mail in support of a local non-discrimination ordinance. I am a gay man who has grown up in Jackson Hole, and I have seen my fair share of homophobia during my life here. It's not a secret that Wyoming has a dark past in relation to LGBT issues; in 1998 Matthew Shepard's murder put Laramie on the international stage. Now twenty years after the event, Wyoming has seen very little progress in terms of LGBT protections.

There is nothing the state of Wyoming has done to make me feel safer. There is nothing the Town of Jackson has done to make me, as a gay man, feel more welcome. I am seen as a prominent public figure in the community, and yet I still do not feel completely safe in my hometown. I am unable to shake the thought that if I flirt with the wrong person at the Million Dollar Cowboy Bar, I could end up in a position similar to that of Matthew Shepard's.

To this day, for LGBT identifying individuals, Wyoming does not have the following:

Employment Non-Discrimination Laws  
Housing Non-Discrimination Laws  
Public Accommodations Non-Discrimination Laws  
Credit and Lending Non-Discrimination Laws  
Non-Discrimination Policies for State Employees  
Non-Discrimination Laws Protecting LGBT Students  
Anti-Bullying Laws Protecting LGBT Students  
Etc.... Sadly, the list goes on.

The irony that our state's motto is "Equal Rights" is not lost on the LGBT community.

Even after Matthew Shepard's murder, Wyoming does not have a state-wide Hate Crime Law that protects LGBT Individuals.

This town ordinance is one step towards acceptance and progress. It harms no one and protects those who need protection. To vote against this ordinance whether for financial or staffing reasons is a direct vote against me and those in my community. It would showcase that despite being contributing and vibrant members of the community, we are not worth protecting. It would showcase that our town believes it is okay for others to discriminate against us based on an aspect of ourselves we could not choose to possess.

Please vote yes and finalize this ordinance. Help promote equal rights so the term "Equality State" stops being a joke and finally rings true.

Sincerely,

Andrew Munz

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**From:** Jayne Ottman  
**To:** [Town Council](#)  
**Subject:** NDO  
**Date:** Monday, May 14, 2018 9:04:38 PM

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Dear Mayor and Town Council,

Please support the non-discrimination ordinance...there really isn't a good reason not to especially with the increased nationalism attitudes of the globe these days. And yes, some here right in good old Jackson unfortunately.

Many Thanks,

Jayne  
Jayne Ottman  
PO Box 433  
Jackson, WY 83001

307-690-1025  
[jottman50@gmail.com](mailto:jottman50@gmail.com)

**From:** kitty\_kd\_kat@yahoo.com  
**To:** [Town Council](#)  
**Subject:** NDO Support  
**Date:** Saturday, May 19, 2018 12:14:33 PM

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To the Honorable Town Council,

I support a non-discrimination ordinance for the Jackson because of my personal experience with the local LGBT community as an ally and a previous leader of the JHHS Gay Straight Alliance. Whether it be young or old, the resounding opinion is that Jackson has the opportunity to become a safer and more welcoming place for the spectrum. It would be a great example to the rest of the state and make some waves of hope for Wyoming LGBT. By continuing this NDO, we truly give all future Wyoming generations the chance to not have to fight this fight and live in peace and not in fear.

I appreciate the time you took to read this and I look forward to seeing you all on Monday.

Kyra

**From:** Kristi Malone  
**To:** [Town Council](#)  
**Subject:** Monday's NDO workshop  
**Date:** Saturday, May 19, 2018 1:33:47 PM

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Councilors,

Thank you for your diligent service in ensuring representation and protection for minorities beyond those offered by our federal and state governments. Now more than ever it is integral that we provide support to those still vulnerable to discrimination in our community. We may be a small town, but if even one less community member feels imperiled by an employer, landlord or business owner due to a single facet of their own character, your time and effort will be worth it. I support a non discrimination ordinance for the Town of Jackson and encourage you to pass the baton to our County Commissioners to ensure even broader protections.

Thank you,  
Kristi Malone

**From:** Michael Yin  
**To:** [Town Council](#)  
**Subject:** Support for an Non-Discrimination Ordinance  
**Date:** Friday, May 18, 2018 10:13:09 PM

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Dear Mayor Muldoon and Council,

I support an NDO for the Town of Jackson (and also think we should enshrine sexual orientation and gender identity as protected classes into state statute).

-mike yin

**From:** Pastor Inger  
**To:** [Town Council](#)  
**Subject:** In Support of the NDO  
**Date:** Tuesday, May 15, 2018 3:32:37 PM

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Dear Town of Jackson Council,

As a faith leader in this community, I support a non-discrimination ordinance for the Town of Jackson. Scripture tells me over and over again of God's love for the vulnerable; challenging me to think beyond nationality, ethnicity, religion, sexual identity or sexuality when I extend love to my neighbors.

The LGBTQ community experiences marginalization in so many ways. An NDO is the right step in protecting the vulnerable from being treated unfairly in housing or in work.

Thank you for your time.

Pastor Inger Hanson

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The Rev. Inger B. Hanson  
Shepherd of the Mountains Lutheran Church (ELCA)  
750 Seneca Lane  
Jackson, WY 83001  
(307) 733-4382

**From:** Sabrina King  
**To:** [Pete Muldoon](#)  
**Subject:** Thoughts on NDO  
**Date:** Monday, May 21, 2018 7:40:58 AM  
**Attachments:** [image004.png](#)

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Morning Pete –

Thanks for sending that along. Overall, props to your city staff who put this together. Just a couple thoughts:

1. On the definitions of sexual orientation and gender identity, those follow best practices and look good. If there are more questions about how gender identity is defined, we do have further language. I certainly don't think this is required, but if people are looking for more language, this is possible: *"A person's gender identity may be established by evidence of medical history, care, or treatment of the gender identity, consistent and uniform assertion of the gender identity, or other evidence that the gender identity is sincerely held, core to a person's self-related gender identity, and not being asserted for an improper purpose."*
2. Additionally, if folks want to add in the Wyoming Constitution to Section X.XX.110, this is good language: *"Nothing in this section shall be construed to violate the rights to freedom of speech or religion guaranteed by the First Amendment to the United States Constitution or the Wyoming Constitution."*

The exemptions look par for the course, so we have no problem with those. Additionally, we consider it a matter of policy whether you and the council want to go with Option 1 or Option 2 for enforcement, so take no position there. I read it as a choice of whether the city's judiciary or the city's administrative branch are changed with enforcement; I think the answer to this lies in whether the administrative route will end up being so costly people vote against the ordinance. I don't know where councilmembers stand on that front, but I would venture a guess the judicial route will be less administratively costly.

Thanks Pete,

Sabrina

**Sabrina King**



*She/Her/Ella*

Policy Director

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**From:** Sharon Rudd  
**To:** [Town Council](#)  
**Subject:** NDO  
**Date:** Monday, May 14, 2018 5:09:49 PM

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Dear Mayor & Town Council,

I support a non-discrimination ordinance for the Town of Jackson because it would be very encouraging to

LGBT folks like my son, who grew up in Jackson Hole. He would be happy to know that his hometown is not

as bigoted as he believes most of Wyoming to be.

Thank you for your attention to this matter,

Sharon Rudd