

POSSIBLE MOTION

I MOVE TO approve Ordinance 2017-42 on
first reading.

CITY AND BOROUGH OF SITKA
ORDINANCE NO. 2017-42

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA ADDING A NEW TITLE 24 "NON-DISCRIMINATION" AND A NEW CHAPTER 24.05 "NON-DISCRIMINATION"

1. **CLASSIFICATION.** This ordinance is of a permanent nature and is intended to be a part of the Sitka General Code of the City and Borough of Sitka, Alaska.
2. **SEVERABILITY.** If any provision of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and application thereof to any person and circumstances shall not be affected thereby.
3. **PURPOSE.** The purpose of this ordinance is to add a new title to Sitka General Code, Title 24, entitled "Non-Discrimination", which addresses and clarifies the concept of inappropriate discrimination in the municipality, as provided for and defined in the sections under Chapter 24.05 entitled "Non-Discrimination".
4. **ENACTMENT.** NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka that the Sitka General Code is amended by adding Title 24, "Non-Discrimination" (new language underlined; deleted language stricken):

Title 24
Non-Discrimination

Chapter: 24.05 Non-Discrimination

Sections:

- 24.05.010 Definitions
- 24.05.020 Policy
- 24.05.030 Discrimination in employment
- 24.05.040 Discrimination in the provision of housing or realty
- 24.05.050 Discrimination in public accommodations
- 24.05.060 Lawful Practices
- 24.05.070 Unlawful intimidation or retaliation
- 24.05.080 Aiding, abetting, or coercing a violation
- 24.05.090 Cause of action

24.05.010 Definitions.

For purposes of this chapter:

A. Disability means, with respect to a person:

1. a physical or mental impairment which substantially limits one or more of a person's major life activities;
2. a record of having such impairment; or
3. being regarded as having such an impairment. "Disability" does not include current, illegal use of or addiction to a controlled substance in violation of applicable state law. However, a person may be considered to be disabled if that person:

- 56 a. has successfully completed a supervised drug rehabilitation program, and
57
58 i. is no longer engaging in the illegal use of a controlled substance;
59
60 ii. is not currently addicted to a controlled substance; or
61
62 iii. has otherwise been rehabilitated successfully and is no longer engaging in
63 use of a controlled substance and is not currently addicted;
64
65 b. is participating in a supervised rehabilitation program and is no longer engaging in
66 illegal use of controlled substances; or
67
68 c. is erroneously regarded as currently illegally using, or being addicted to, a
69 controlled substance.
70

71 B. Employer includes any person who employs four or more persons exclusive of that person's parents,
72 spouse or children.
73

74 C. Employment agency includes any person undertaking for compensation to procure opportunities to
75 work or to procure, recruit, refer or place employees.
76

77 D. Familial status means marital status, changes in marital status, pregnancy, or parenthood.
78

79 E. Financial institution means bank, banking organization, mortgage company, insurance company,
80 investment company, or other lender to whom application is made for financial assistance for the
81 purchase, lease, acquisition, construction, rehabilitation, repair, maintenance, or improvement of real
82 property, or an individual employed by or acting on behalf of or as agent of any of these.
83

84 F. Gender identity means a person's gender-related self-identity appearance, expression, or behavior,
85 regardless of the person's assigned sex at birth. A person's gender identity may be shown by evidence
86 of medical history, care or treatment of the gender identity, consistent and uniform assertion of the
87 gender identity, or other evidence that the gender identity is sincerely held, core to a person's gender-
88 related self-identity, and not being asserted for an improper purpose.
89

90 G. Gender expression means the external appearance of one's gender identity, usually expressed
91 through behavior, clothing, haircut or voice, and which may or may not conform to socially defined
92 behaviors and characteristics typically associated with being either masculine or feminine.
93

94 H. Housing for older persons means housing:
95

- 96 1. provided under any state or federal program that the Secretary of the United States
97 Department of Housing and Urban Development has determined is specifically designed
98 and operated to assist elderly persons;
99
100 2. intended for, and solely occupied by, persons 55 years of age or older; or
101
102 3. intended and operated for occupancy by at least one person 55 years of age or older per
103 unit.
104

105 I. Individual means one or more Individuals.
106

107 J. Labor organization includes any organization which exists for the purpose, in whole or in part, of
108 collective bargaining or of dealing with employers concerning grievances, terms or conditions of
109 employment, or for other mutual aid or protection in relation to employment.
110

111 K. National origin includes ancestry.
112

113 L. Person includes one or more individuals, partnerships, associations, unincorporated organizations,
114 corporations, mutual companies, joint-stock companies, legal representatives, trusts, trustees, trustees in
115 bankruptcy, and receivers.
116

117 M. Place of public accommodation means all places or businesses offering or holding out to the general
118 public services or facilities for the comfort, health and safety of the general public, including public places
119 providing food, shelter, recreation and amusement.
120

121 N. Sexual orientation means actual or perceived heterosexuality, homosexuality, bisexuality, or
122 asexuality.
123

124 24.05.020 Policy.

125 It is the policy of the city and borough to eliminate unlawful discrimination based on race, color, age,
126 religion, sex, familial status, disability, sexual orientation, gender identity, gender expression, or national
127 origin. Such discrimination poses a threat to the health, safety and general welfare of the citizens of the
128 city and borough.
129

130 24.05.030 Discrimination in employment
131

132 A. It shall be a prohibited discriminatory employment practice:
133

134 1. For an employer to fail or refuse to hire, to discharge, bar from employment, or otherwise
135 to discriminate against any individual with respect to compensation or the terms, conditions, or
136 privileges of employment because of race, color, age, religion, sex, familial status, disability,
137 sexual orientation, gender identity, gender expression, or national origin;
138

139 2. For a labor organization to exclude or expel from membership, or otherwise to
140 discriminate against any applicant or member, because of race, color, age, religion, sex, familial
141 status, disability, sexual orientation, gender identity, gender expression, or national origin of any
142 applicant or member;
143

144 3. For an employment agency to fail or refuse to refer for employment, or otherwise to
145 discriminate against any individual because of race, color, age, religion, sex, familial status,
146 disability, sexual orientation, gender identity, gender expression, or national origin of said
147 individual;
148

149 4. For an employer, labor organization, or employment agency to print or circulate or cause
150 to be printed or circulated any statement, advertisement, or publication, or to make any inquiry in
151 connection with prospective employment, which expresses directly or indirectly a preference,
152 limitation, specification, or discrimination because of race, color, age, religion, sex, familial status,
153 disability, sexual orientation, gender identity, gender expression, or national origin, unless based
154 upon a bona fide occupational qualification;
155

156 5. For an academic, professional or vocational school to exclude or expel from enrollment, or
157 otherwise to discriminate against any applicant or student, because of the student's race, color,

158 religion, familial status, disability, sexual orientation, gender identity, gender expression, or
159 national origin;

160
161 6. For an academic, professional or vocational school to print or circulate or cause to be
162 printed or circulated, a statement, advertisement or publication, or to use any form of application
163 for admission to said school, or to make any inquiry in connection with prospective enrollment in
164 said school, which expresses directly or indirectly a preference, limitation, specification, or
165 discrimination because of race, color, religion, sexual orientation, gender identity, gender
166 expression, familial status, disability, or national origin;

167
168 B. Nothing in this chapter shall be interpreted to require an employer, employment agency, labor
169 organization, or joint labor-management committee subject to this ordinance to grant or accord
170 preferential treatment to an individual or group because of the race, color, religion, sexual orientation,
171 gender identity, gender expression, familial status, disability, or national origin of such individual or group
172 because of an imbalance that may exist with respect to the total number or percentage of persons of any
173 race, color, religion, sexual orientation, gender identity, gender expression, familial status, disability, or
174 national origin employed by an employer, referred or classified for employment by an employment
175 agency or labor organization, admitted to membership or classified by a labor organization, or admitted
176 to or employed in an apprenticeship or other training program in comparison with the total number or
177 percentage of persons of such race, color, religion, sexual orientation, gender identity, gender
178 expression, familial status, disability, or national origin in this community or in the available work force in
179 this community.

180
181 24.05.040 Discrimination in the provision of housing or realty.

182 A. It shall be a prohibited housing or realty practice:

183
184 1. For a person, including a banking, money lending, credit securing or other financial
185 institution, or an officer, agent or employee thereof, to discriminate against an individual because
186 of race, color, age, religion, sex, familial status, disability, sexual orientation, gender identity,
187 gender expression, or national origin, with respect to the granting or withholding of credit or
188 financial assistance, or modifying of rates, terms, conditions, privileges or other provisions of
189 credit or financial assistance, in connection with the transfer or prospective transfer of any interest
190 whatsoever in realty, or in connection with the construction, repair, improvement, or rehabilitation
191 of realty;

192
193 2. For a real estate broker, salesperson, or agent, or an employee thereof, or any other
194 person seeking financial gain thereby, directly or indirectly to induce or solicit, or attempt to
195 induce or solicit, the transfer of any interest whatsoever in realty, by making or distributing, or
196 causing to be made or distributed, a statement or representation concerning the entry or
197 prospective entry into the neighborhood of a person or persons of a particular race, color, age,
198 religion, sex, familial status, disability, sexual orientation, gender identity, gender expression, or
199 national origin;

200
201 3. For a person to refuse to sell or rent after the making of a bona fide offer, or to refuse to
202 negotiate the sale or rental of, or otherwise make unavailable or deny a dwelling to a person
203 because of race, color, age, religion, sex, familial status, disability, sexual orientation, gender
204 identity, gender expression, or national origin;

205
206 4. For a person to discriminate against another person in the terms, conditions, or privileges
207 of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith,
208 because of race, color, age, religion, sex, familial status, disability, sexual orientation, gender
209 identity, gender expression, or national origin;

210
211 5. For a person to make, print, or publish, or cause to be made, printed, or published a
212 notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates
213 any preference, limitation, or discrimination based on race, color, age, religion, sex, familial
214 status, disability, sexual orientation, gender identity, gender expression, national origin, or an
215 intention to make any such preference, limitation, or discrimination;
216

217 6. For a person to represent to another person because of race, color, age, religion, sex,
218 familial status, disability, sexual orientation, gender identity, gender expression, or national origin
219 that a dwelling is not available for inspection, sale, or rental when such dwelling is, in fact,
220 available for such purpose; and
221

222 7. For a person to deny another person access to or membership or participation in a
223 multiple-listing service, real estate brokers' organization, or other service, organization, or facility
224 relating to the business of selling or renting dwellings, or to discriminate against another person in
225 the terms or conditions of such access, membership or participation on account of race, color,
226 age, religion, sex, familial status, disability, sexual orientation, gender identity, gender expression,
227 or national origin.
228

229 B. For purposes of this section, with respect to persons with disabilities, the term prohibited
230 discriminatory practices includes:
231

232 1. Refusal to permit, at the expense of a person with a disability, or another person on behalf
233 of a person with a disability, reasonable modification of existing premises occupied by or to be
234 occupied by the person with disabilities if the modification may be necessary or desirable to afford
235 the person with a disability full enjoyment of the premises, except that, in the case of a rental unit
236 the landlord may, where it is reasonable to do so, condition permission for a modification on the
237 renter agreeing to restore the interior of the premises to the condition that existed before the
238 modification, reasonable wear and tear excepted; and
239

240 2. A refusal to make reasonable accommodations in rules, policies, practices, or services,
241 when accommodation may be necessary to afford the person an equal opportunity to use and
242 enjoy a dwelling.
243

244 24.05.050 Discrimination in public accommodations.
245

246 A. It shall be a prohibited discriminatory public accommodation practice for any person, including any
247 owner, lessee, manager, proprietor, custodian, agent, or employee of a place of public accommodation
248 to discriminate against any individual because of race, color, age, religion, sex, familial status, disability,
249 sexual orientation, gender identity, gender expression, or national origin, with respect to the terms,
250 conditions, and privileges of access to or with respect to the uses, services, and enjoyment of a place of
251 public accommodation.
252

253 B. To publish, circulate, issue, display, post, or mail a written or printed communication, notice, or
254 advertisement that states or implies
255

256 1. that any of the services, goods, facilities, advantages, or privileges of the public
257 accommodation will be refused, withheld from, or denied to a person of a certain race, color, age,
258 religion, sex, familial status, disability, sexual orientation, gender identity, gender expression, or
259 national origin; or
260

261 2. that the patronage of a person belonging to a particular race, color, age, religion, sex,
262 familial status, disability, sexual orientation, gender identity, gender expression, or national origin
263 is unwelcome, not desired, or solicited.
264

265 C. Notwithstanding (a) of this section, a physical fitness facility may limit public accommodation to a
266 single gender to protect the privacy interests of its users. Public accommodation may be limited under
267 this subsection only to those rooms in the facility that are primarily used for weight loss, aerobic, and
268 other exercises, or for resistance weight training. Public accommodation may not be limited under this
269 subsection to rooms in the facility primarily used for other purposes, including conference rooms, dining
270 rooms, and premises licensed under AS 04.11. This subsection does not apply to swimming pools or golf
271 courses.
272

273 24.05.060 Lawful practices.

274 A. Nothing in this chapter shall be construed to preempt federal law with respect to a federally
275 recognized Tribe granting preference in employment or housing to Tribal members.
276

277 B. The provisions of SGC 24.05.040.A.3 shall not apply to rental of a room or rooms in a dwelling
278 unit actually occupied by the owner or lessee as the owner's or lessee's residence, or actually occupied
279 by a member of the owner's or lessee's immediate family as the family member's residence. For
280 purposes of this section, "immediate family member" means the owner's or lessee's spouse, minor child,
281 dependent, or a regular member of the owner's or lessee's household, provided that the owner or lessee
282 rents not more than three rooms within the residence.
283

284 C. The provisions of SGC 24.05.040 and SGC 24.05.050 regarding age and familial status shall not
285 apply with respect to housing for older persons.
286

287 D. Nothing in this chapter prohibits a religious organization, association, or society, or a nonprofit
288 institution or organization operated, supervised, or controlled by a religious organization, association, or
289 society, from limiting the sale, rental or occupancy of dwellings it owns or operates for other than a
290 commercial purpose to persons of the same religion, or from giving preference to such a person. Neither
291 shall anything in this chapter prohibit a private club not in fact open to the public, which as an incident to
292 its primary purpose or purposes provides lodgings which it owns or operates for club purposes and not
293 for profit, from limiting the rental or occupancy of such lodgings to its members or from giving preference
294 to its members.
295

296 E. This chapter shall not apply with respect to the employment of individuals whose positions would
297 fall within the "ministerial exemption" as described by the United States Supreme Court in Hosanna-
298 Tabor Evangelical Lutheran Church and School v. EEOC, 132 S.Ct 694 (2012).
299

300 F. Nothing in this chapter shall be construed to diminish the protections afforded employees of the
301 city and borough under City and Borough of Sitka Personnel Policies Handbook section 3.4.
302

303 G. Notwithstanding the prohibition against employment discrimination on the basis of familial status
304 under SGC 24.05.030,
305

306 1. an employer may, without violating SGC 24.05.030, provide greater health and retirement
307 benefits to employees who have a spouse or dependent children than are provided to other
308 employees;
309

310 2. a labor organization may, without violating SGC 24.05.030, negotiate greater health and
311 retirement benefits for employees of an employer who have a spouse or dependent children than
312 are provided to other employees of the employer.

313
314 H. Nothing in this chapter shall prohibit the establishment of a same-sex shelter or residential facility
315 for the care and lodging of persons in need of special medical, rehabilitative, social, or psychological
316 support, including, but not limited to: emergency shelters for victims of domestic violence and sexual
317 assault; half-way houses; drug treatment centers; detoxification facilities; and shelters for the homeless,
318 provided that such establishment does not discriminate based on race, color, age, religion, familial
319 status, disability, sexual orientation, gender identity, gender expression, or national origin.
320

321 I. It shall not be an unlawful practice for any financial institution or other commercial institution
322 extending credit from engaging in any practice permitted by federal statute or regulation applicable to
323 financial or credit transactions of the same character as those covered by SGC 24.05.040.A.1.
324

325 24.05.070 Unlawful intimidation or retaliation.

326 It shall be a prohibited discriminatory practice for a person, directly or indirectly, to discriminate, coerce,
327 intimidate, threaten, interfere with, or retaliate against a person because the person has:
328

329 1. opposed any practice made unlawful by this chapter; or
330

331 2. exercised the person's rights, or encouraged another to exercise his or her rights under
332 this chapter.
333

334 24.05.080 Aiding, abetting, or coercing a violation.

335 It is unlawful for any person to aid, abet, incite, compel, or coerce the doing of an act forbidden under this
336 chapter or to attempt to do so.
337

338 24.05.090 Cause of action.
339

340 A. A person aggrieved by a discriminatory practice prohibited under this chapter may, within 300
341 days of any violation of this chapter, petition in court to enjoin a violation of this chapter or seek remedy
342 for a violation.
343

344 B. Remedy may include such relief as the court deems just and proper, and may include one or
345 more of the following:
346

347 1. requiring training concerning discriminatory practices;
348

349 2. an accommodation for a person with a disability;
350

351 3. removal of or changes to a personnel record;
352

353 4. posting of signs;
354

355 5. back pay;
356

357 6. the hiring, reinstatement, or upgrading of an employee with or without back pay;
358

359 7. the payment of front pay for a period of not more than one year if hiring, reinstatement, or
360 upgrading of an employee is inappropriate because a vacancy does not exist, the employer's
361 discriminatory practice rendered the employee incapable of returning to work, or the relationship
362 between the employer and employee has so deteriorated as to make working conditions
363 intolerable;
364

365 8. restoration to membership in a labor organization;

366
367 9. admission to or participation in an apprenticeship training program, on-the-job training
368 program, or other retraining program;

369
370 10. restoration of seniority;

371
372 11. the sale, lease, or rental of the housing accommodation to the aggrieved person if it is still
373 available, or the sale, lease, or rental of a like accommodation owned by the respondent if one is
374 still available, or the sale, lease, or rental of the next vacancy in a like accommodation, owned by
375 the respondent; and

376
377 12. actual damages incurred as a result of the unlawful practice or violation.

378
379 C. An order for back pay or front pay under SGC 24.050.090.B.5-7 of this section must be reduced
380 by the amount the employee could have earned or could earn by making reasonably diligent efforts to
381 obtain similar employment.

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383 * * *

384 5. **EFFECTIVE DATE.** This Ordinance shall become effective on the day after the date of its
385 passage.

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387 **PASSED, APPROVED, AND ADOPTED** by the Assembly of the City and Borough of Sitka, Alaska this
388 12th day of December, 2017.

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390
391
392 _____
Matthew Hunter, Mayor

393 ATTEST:

394
395
396 _____
397 Sara Peterson, CMC
398 Municipal Clerk

399
400 1st reading 11/28/17

401 2nd reading 12/12/17