



**CITY OF SALINAS
COUNCIL STAFF REPORT**

DATE: September 12, 2023 - Introduction
September 26, 2023 – 2nd Reading

DEPARTMENT: OFFICE OF THE CITY ATTORNEY

FROM: CHRISTOPHER A. CALLIHAN, CITY ATTORNEY

TITLE: AN ORDINANCE PROHIBITING DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION, GENDER IDENTITY, OR GENDER IDENTITY

RECOMMENDATION MOTION:

Consider adopting an ordinance prohibiting discrimination on the basis of sexual orientation, gender identity, and gender expression.

EXECUTIVE SUMMARY:

Council members Rocha and González requested that this ordinance be brought forward for the City Council’s consideration.

The City of Salinas is home to people of every sex, race, color, religion, ancestry, national origin, mental or physical disability, sexual orientation, and gender identity. Salinas and the Salinas City Council embrace the dignity, humanity, and individuality of all people and strives to provide a safe and welcoming environment for residents and visitors of every background.

The proposed ordinance updates the Salinas Municipal Code’s non-discrimination provisions and makes Salinas consistent with State law. It makes clear that the City of Salinas prohibits discrimination on the basis of a person’s gender identity, incorporating and augmenting existing protections under State law.

DISCUSSION:

The City of Salinas is committed to ensuring equal opportunities for all residents, visitors, and employees. From time-to-time it is necessary to update the City’s ordinance and policies to ensure they provide for the most-current and most-appropriate protections. In keeping with this commitment, this proposed ordinance incorporates non-discrimination provisions into Salinas’s Municipal Code. The proposed ordinance makes Salinas consistent with State law, where State law is stronger. It provides that the City of Salinas prohibits discrimination on the basis of sexual

orientation as well as a person’s gender identity or gender expression. While both Federal and State law provide protections against discrimination on these bases, efforts are underway across the country to erode those protections; to enact legislation which takes away protections from discrimination. The proposed ordinance provides an additional layer of protection for Salinas residents, visitors, and employees and makes clear the City Council's commitment to protecting all individuals regardless of their sexual orientation, gender identity, or gender expression.

Several other California cities and counties have adopted similar ordinances including: Oakland, West Hollywood, Cathedral City, Los Angeles, Palm Springs, Sacramento, San Diego, San Francisco, and Santa Cruz County.

CEQA CONSIDERATION:

The City Council’s adoption of the proposed ordinance is not a project subject to environmental review under the California Environmental Quality Act (CEQA Guidelines section 15061(b)(3)).

STRATEGIC PLAN INITIATIVE:

The City Council’s adoption of the proposed ordinance is consistent with and supports the City Council’s Goal of a Culturally Responsive Government (City of Salinas Strategic Plan 2022-2025).

FISCAL AND SUSTAINABILITY IMPACT:

The City Council’s approval of the proposed ordinance would not have an impact on the City’s General Fund.

DEPARTMENTAL COORDINATION

The City Attorney’s Office coordinated with the City Clerk and Council members Rocha and González on this Report.

ATTACHMENTS:

Ordinance

ORDINANCE NO. _____ (N.C.S.)

AN ORDINANCE AMENDING THE SALINAS MUNICIPAL CODE TO PROHIBIT DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION, GENDER IDENTITY, OR GENDER EXPRESSION

City Attorney Impartial Analysis

This ordinance adds Article XIV to Chapter 20 of the Salinas Municipal Code. This addition codifies a local prohibition on discrimination based on sexual orientation, gender identity, or gender expression with respect to housing; employment; the availability of goods, services, or facilities from any business establishment, including the City of Salinas; the use or availability of any municipal service or facility, and/or the use or availability of any service or facility wholly or partially or otherwise supported by the City. All contractors and subcontractor for City public works, goods, and services would be subject to this prohibition.

BE IT ORDAINED BY THE COUNCIL OF SALINAS as follows:

SECTION 1. Article XIV is hereby added to Chapter 5 of the Salinas Municipal Code as follows:

Article XIV. Discrimination on the Basis of Sexual Orientation, Gender Identity, and Gender Expression.

Sec. 5-14.01. Policy.

It is hereby declared as the public policy of the City of Salinas that it is necessary to protect and to safeguard the right and the opportunity of all persons to be free from discrimination on account of sexual orientation, gender identity, or gender expression.

Sec. 5-14.02. Definitions.

“Business establishment” means any entity, however organized, which furnishes goods, services, or accommodations to the general public.

“Discrimination” means any act, policy, or practice which, regardless of intent, has the effect of subjecting any person to differential treatment as a result of that person’s sexual orientation or gender identity or gender expression. The phrase “differential treatment” includes any limitation on a person’s full, unsegregated and equal access to or employment of, employment, real estate transactions, business establishments, and municipal services.

“Gender expression” means a person’s gender-related appearance or behavior, or the perception of such appearance or behavior, whether or not stereotypically associated with the person’s sex assigned at birth.

“Gender identity” means each person’s internal understanding of their gender, or the perception of a person’s gender identity, which may include male, female, a combination of male and female, neither male nor female, a gender different from the person’s sex assigned at birth, or transgender.

“Person” means any natural person, firm, corporation, partnership, or other organization, association, or group of persons however organized.

“Real estate transactions” means and includes the sale, repair, improvement, lease, rental, or occupancy of any interest or portion of any interest in real property and shall also include the extension of credit, financing, insurance, or services in connection with the sale, repair, improvement, lease, rental, or occupancy of any such interest in real property.

“Sexual orientation” means actual or perceived homosexuality, heterosexuality, or bisexuality.

Sec. 5-14.03. Unlawful Activities, Generally.

It is unlawful for any person to do anything which has the effect of discriminating against any person as a result of that person’s sexual orientation or gender identity or gender expression, with respect to any of the following activities: employment, any real estate transaction, the availability of goods, facilities, or services from any business establishment, the use or availability of any municipal service or facility, and/or the use or availability of any service or facility wholly or partially or otherwise supported by the City.

Sec. 5-14.04. Employment.

A. Unlawful Employment Practices. It is an unlawful employment practice for any person to do any of the following acts wholly or partially based on sexual orientation of an employee or applicant for employment, unless based on a bona fide occupational qualification:

1. No employer shall refuse to hire, or discharge any individuals, discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, including promotion; or to limit, segregate, or classify employees in any way which would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect his or her status as an employee.
2. No employment agency shall fail or refuse to refer for employment any individual; or otherwise to discriminate against any individual.
3. No labor organization shall exclude or expel from the membership or otherwise discriminate against any individual; or limit, segregate, or classify its membership or to classify or fail, or refuse to refer to employment any individual in any way which would deprive or tend to deprive such individual of employment opportunities, or would limit such employment opportunities, or otherwise affect his or her status as an applicant for employment.
4. No employer, employment agency, or labor organization shall:
 - a. Discriminate against any individual in admission to or employment in, any program established to provide apprenticeship or other training or retraining, including any on-the-job training program; or

- b. Print, publish, advertise, or disseminate in any way, or cause to be printed published, advertised, or disseminated in any way, any notice or advertisement with respect to employment, membership in, or any classification or referral for employment or training by such organization which states that an unlawful discriminatory practice will be engaged in.

B. Exception.

It is not unlawful discriminatory practice for an employer to observe the conditions of a bona fide seniority system or a bona fide employment benefit system, provided such systems or plans are not a subterfuge to evade the provisions of this article.

Sec. 5-14.05. Business Establishments.

A. Unlawful Business Practice.

1. In General. It is an unlawful business practice for any person to deny any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any business establishment on the basis (in whole or in part) of such person's sexual orientation, gender identity, or gender expression.
2. Credit. It is an unlawful business practice for any person to deny credit to any person on the basis (in whole or in part) of such person's sexual orientation or gender identity.
3. Advertising. It is an unlawful business practice for any person to make, print, publish, advertise, or disseminate in any way any notice, statement, or advertisement with respect to any business establishment which states that such establishment engages or will engage in any unlawful practice as defined in this section.

Sec. 5-14.06. Real Estate Transactions.

A. Unlawful Real Estate Practices. It is an unlawful real estate practice for any person to do any of the following acts wholly or partially based on sexual orientation, gender identity, or gender expression:

1. To terminate, or fail or refuse to initiate or conduct any transaction in real property, including, but not limited to, the rental thereof; to include in the terms or conditions of a transaction in real property any clause, condition, or restriction; or falsely to represent that an interest in real property is not available for a transaction in connection therewith, including, but not limited to, rental or leasing thereof.
2. To refuse to lend money, guarantee the loan, accept the deed of trust or mortgage, or otherwise refuse to make available funds for the purchase, acquisition, construction, alteration, rehabilitation, repair, or maintenance of real property; or impose different conditions on such financing; or refuse to provide title or other insurance relating to the ownership or use of any interest in real property.
3. To refuse or restrict facilities, services, repairs, or improvements for any tenant or lessee.

4. To make, print, publish, advertise, or disseminate, in any way, any notice, statement, or advertisement with respect to financing related to any such transaction which states that any unlawful real estate practice as defined in this section will be engaged in.
- B. Exceptions.
- A. Owner-Occupied Dwellings. Nothing in this article shall be construed to apply to the rental or leasing of any housing unit in which the owner or lessor or any member of his or her family occupies one of the living units and it is necessary for the owner or lessor or any member of his or her family to use either a bathroom or kitchen facility in common with the prospective tenant.
 - B. Effect on Other Laws. Nothing in this section shall be deemed to permit any rental or occupancy of any dwelling unit or commercial space otherwise prohibited by law.

Sec. 5-14.07. City Facilities and Services.

- A. Unlawful Services Practices.
1. City Facilities. It is an unlawful service practice for any person to deny any individual the full and equal enjoyment of, or to impose different terms and conditions upon the availability of, any service program or facility wholly or partially funded or otherwise supported by the City on the basis, in whole or in part, on the individual's sexual orientation, gender identity, or gender expression.
 2. City Services. It is an unlawful service practice to any person to deny any individual the full and equal enjoyment of, or to impose different terms or conditions on the availability of, any City service, on the basis, in whole or in part, on such individual's sexual orientation, gender identity, or gender expression.
 3. Supported Facilities and Services. It is an unlawful service practice for any person to deny any individual the full and equal enjoyment of, or to impose different terms and conditions upon the availability of, any service, program, or facility whole or partially funded or otherwise supported by the City on the basis, in whole or in part, of the individual's sexual orientation, gender identity, or gender expression. This subsection does not apply to facilities or services which only receive assistance from the City which is provided to the general public.
 4. Advertising. It is an unlawful service practice for the City or any person employed by the City to make, print, publish, advertise, or disseminate in any way any notice, statement, or advertisement with respect to any service or facility provided by the City which states that the City or any person employed by the City engages or will engage in an unlawful service practice.
 5. It is an unlawful service practice for any organization described in subsection A.3 of this section to make, print, publish, advertise, or disseminate in any way any notice, statement, or advertisement with respect to any service or facility provided by such organization which states that such organization engages in or will engage in unlawful service practices as defined in this section.

Sec. 5-14.08. Contractors and Subcontractors for City Public Works, Goods and Services.

- A. Any employer, employment agency, or labor organization who is, or wishes to become, a contractor with the City for public works or for goods or services is subject to the provisions of this article relating to discrimination in employment and to the nondiscrimination requirements of this article.

Prior to becoming a contractor or subcontractor with the City, or if, at any time the City has a reasonable basis to believe non-compliance on the part of a contractor or subcontractor, an employer, employment agency, or labor organization may be required to submit a nondiscrimination program to the City for approval and certification and may be required to submit periodic reports of its compliance with such a program.

- B. Every City contract and subcontract for public works or goods or services shall contain a nondiscrimination clause prohibiting discrimination on the basis of sexual orientation, gender identity, or gender expression by contractors or subcontractors. The nondiscrimination clause shall contain a provision requiring contractors or subcontractors to give written notice of their obligations under such clause to labor organizations with which they have a collective bargaining or other agreement. Such contractual provisions shall be fully and effectively enforced.

- C. Advertising. It is unlawful for any person to make, publish, or disseminate any notice or statement which indicates that such person engages in or will engage in any practice prohibited by this article.

Sec. 5-14.09. Public Accommodations. It shall be an unlawful practice for any person to deny any individual access to the full and equal enjoyment of privileges, benefits, goods, services, and facilities, including dressing and bathroom facilities, consistent with the person's gender identity.

Sec. 5-14.10. Notices.

Every employer with fifteen (15) or more employees, every labor organization with fifteen (15) or more members, and every employment agency shall post and keep posted in a conspicuous place upon its premises where notices to employees, applicants for employment, and members are customarily posted, the following notice:

“Discrimination on the basis of sexual orientation and/or gender identity or gender expression is prohibited by law. Chapter 5, Article XIV of the Salinas Municipal Code.”

- (1) Alternative Compliance Notwithstanding the above, the provisions of this subsection may be complied with by adding the words “sexual orientation and/or gender identity or gender expression” to all notices required by federal or state law, and indicating on the notice that discrimination on the basis of sexual orientation is prohibited by Chapter 5, Article XIV of the Salinas Municipal Code.

Sec. 5-14.11. Retaliation Prohibited.

No person shall retaliate against any individual because such individual seeks the enforcement of the provisions of this article.

Sec. 5-14.12. Exemption.

The provisions of this article shall not apply to religious organizations or corporations not organized for private profit in the conduct of their religious activities.

Sec. 5-14.13. Civil Remedy.

Any person who violates any provision of this article shall be liable in civil damages including costs and attorney's fees, as provided by California Civil Code Section 52.

Sec. 5-14.14. Criminal Liability.

- A. Any person who violates any provision of this article or who aids or incites such violation shall be deemed guilty of an infraction.
- B. Each violation of the notice provisions of this article shall be punishable as an infraction, the fine for which shall be levied in the amounts prescribed by Section 36900 of the Government Code as that section may hereinafter be amended or renumbered.

Sec. 5-14.15. Civil Enforcement.

- A. Civil Action. Any aggrieved person may enforce this article in a civil action in any court of competent jurisdiction.
- B. Injunctions. Any person may bring a civil action in any court of competent jurisdiction to enjoin any person who commits or proposes to commit any act in violation of this article.

Sec. 5-14.16. Limitation on Action; Non-waiverability.

- A. Judicial actions under this article must be filed within two years of the alleged discriminatory act.
- B. Any written or oral agreement whereby any provision of this article is waived or modified, is against public policy and void.

Sec. 5-14.17. Severability.

If any provision of this article or the application thereof to any person or circumstances is held invalid, the remainder of this article, including the application of such a part or provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby and shall continue in full force and effect.

SECTION 2. Publication. The City Clerk shall cause a summary of this ordinance to be published once in a newspaper published and circulated in Salinas within fifteen (15) days after adoption. (Salinas Charter Section 11.9)

SECTION 3. CEQA Compliance. The City Council’s adoption of this ordinance is not a project subject to environmental review under the California Environmental Quality Act (CEQA Guidelines section 15061(b)(3)).

SECTION 4. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Salinas City Council hereby declares that it would have passed this ordinance, and each and every section, subsection, clause, and phase thereof not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 5. Effective Date. This Ordinance will take effect thirty (30) days from and after its adoption.

PASSED AND ADOPTED this ____ day of _____, 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Kimbley Craig, Mayor

ATTEST:

Patricia M. Barajas, City Clerk

APPROVED AS TO FORM:

Christopher A. Callihan, City Attorney