

COUNCIL BILL NO. 13-17

ORDINANCE NO. 13-17

1 AN ORDINANCE TO ENTITLED "ILLEGAL DISCRIMINATION" AND TO BE
2 NUMBERED CHAPTER 5.68 OF THE BUTTE-SILVER BOW MUNICIPAL CODE (B-
3 SB MC); PROVIDING FOR ENFORCEMENT; PROVIDING FOR PENALTIES; AND
4 PROVIDING FOR AN EFFECTIVE DATE HEREIN.

5 SECTION 1: New Chapter: There is hereby created a new chapter
6 of the Butte-Silver Bow Municipal Code (B-SB MC) to
7 be named "Illegal Discrimination" and numbered
8 Chapter 5.68.

9 SECTION 2: New Section: There is hereby created a new section
10 of the Butte-Silver Bow Municipal Code (B-SB MC),
11 which shall read as follows:

12 "5.68.010 - PURPOSE AND INTENT. It is the intent
13 of the City and County of Butte-Silver Bow,
14 Montana (City-County) that no person shall be
15 denied his or her civil rights or be
16 discriminated against based upon his or her
17 actual or perceived race, color, national
18 origin, ancestry, religion, creed, sex, age,
19 marital or familial status, physical or mental
20 disability, sexual orientation, gender identity

1 or expression. The Council of Commissioners
2 declares that such discrimination prohibitions
3 are necessary and desirable for the following
4 reasons:

5 A. The City-County deems it necessary
6 consistent with Montana's illegal
7 discrimination law to identify, protect and
8 safeguard the right and opportunity of all
9 persons to be free from discrimination as
10 identified in Montana's illegal discrimination
11 laws as well as to address and make it illegal
12 to discriminate on the basis of sexual
13 orientation, gender identity or expression.

14 B. The City-County finds that discrimination
15 in the areas of employment, public
16 accommodations and housing is a serious threat
17 to the health, safety, and general welfare of
18 the community. Discrimination creates strife
19 and unrest and deprives the City-County of its
20 full capacity for economic development by
21 decreasing productivity and increasing demand
22 for City-County services.

1 C. The City-County has received public
2 testimony and written complaints from citizens
3 reporting instances of discrimination. The
4 City-County finds that existing state and
5 federal laws regarding discrimination do not
6 adequately address all discriminatory acts
7 reported by the City-County's diverse
8 residents. The City-County deems it necessary
9 to adopt local regulations adapted to the needs
10 of its citizens.

11 D. Nothing in this chapter is intended to
12 alter or abridge other rights, protections, or
13 privileges secured by state or federal law,
14 including state and federal constitutional
15 protections of freedom of speech and exercise
16 of religion."

17 SECTION 3: New Section: There is hereby created a new section
18 of the Butte-Silver Bow Municipal Code (B-SB MC),
19 which shall read as follows:

20 "5.68.020 - DEFINITIONS. The following definitions
21 are provided for the sole purpose of proper
22 interpretation and administration of this chapter:

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(1) "Age" means the length of time from the date of birth.

(2) "Discrimination," "discriminate" or "discriminatory" means any act, policy, or practice that has the effect of unfavorably subjecting any person to different or separate treatment on the basis of their actual or perceived race, color, national origin, ancestry, religion, creed, sex, age, marital or familial status, physical or mental disability, sexual orientation, gender identity or expression, or because of their association with a person or group of people so identified. Discrimination based on physical or mental disability includes the failure to make reasonable accommodations that are required by an otherwise qualified person who has a physical or mental disability. An accommodation that would require an undue hardship or that would endanger the health or safety of any person is not a reasonable

1 accommodation.

2 (3) "Educational institution" means a public or
3 private institution and includes an academy;
4 college; elementary or secondary school;
5 extension course; kindergarten; nursery;
6 school system; university; business,
7 nursing, professional, secretarial,
8 technical, or vocational school; or agent of
9 an educational institution.

10 (4) "Employee" means an individual employed by
11 an employer.

12 (5) "Employer" means an employer of one or
13 more persons or an agent of the employer
14 but does not include a fraternal,
15 charitable, or religious association or
16 corporation if the association or
17 corporation is not organized either for
18 private profit or to provide
19 accommodations or services that are
20 available on a nonmembership basis.

21 (6) "Employment agency" means a person
22 undertaking to procure employees or

1 opportunities to work.

2 (7) "Familial status" means having a child or
3 children who live or will live with a
4 person. A distinction based on familial
5 status includes one that is based on the
6 age of a child or children who live or
7 will live with a person.

8 (8) "Gender identity or expression" means a
9 gender-related identity expression, or
10 behavior, regardless of the individual's
11 sex at birth.

12 (9) "Housing accommodation" means a building
13 or portion of a building, whether
14 constructed or to be constructed, that
15 is or will be used as the home,
16 domicile, residence, or sleeping
17 quarters of its occupants.

18 (10) "Labor organization" means an
19 organization or an agent of an
20 organization organized for the
21 purpose, in whole or in part, of
22 collective bargaining, of dealing

1 with employers concerning grievances
2 or terms or conditions of employment,
3 or of other mutual aid and protection
4 of employees.

5 (11) "Marital status" means being married,
6 never married, divorced, or widowed.

7 (12) "Perceived" refers to the perception of
8 the actor, and not to the perception of
9 the person for or against whom the
10 action is taken.

11 (13) "Person" means one or more individuals,
12 labor unions, partnerships, associations,
13 corporations, legal representatives,
14 mutual companies, joint-stock companies,
15 trusts, unincorporated employees'
16 associations, employers, employment
17 agencies, organizations, or labor
18 organizations.

19 (14) (a) "Physical or mental disability" means:

- 20 i. a physical or mental impairment
21 that substantially limits one or
22 more of a person's major life

1 activities;

2 ii. a record of such an impairment; or

3 iii. a condition regarded as such an

4 impairment.

5 (b) Discrimination based on, because
6 of, on the basis of, or on the grounds
7 of physical or mental disability
8 includes the failure to make reasonable
9 accommodations that are required by an
10 otherwise qualified person who has a
11 physical or mental disability. An
12 accommodation that would require an
13 undue hardship or that would endanger
14 the health or safety of any person is
15 not a reasonable accommodation.

16 (15) (a) "Public accommodation" means a place
17 that caters or offers its services, goods,
18 or facilities to the general public
19 subject only to the conditions and
20 limitations established by law and
21 applicable to all persons. It includes
22 without limitation a public inn,

1 restaurant, eating house, hotel,
2 roadhouse, place where food or alcoholic
3 beverages or malt liquors are sold for
4 consumption, motel, soda fountain, soft
5 drink parlor, tavern, nightclub, trailer
6 park, resort, campground, barbering,
7 cosmetology, electrology, esthetics, or
8 manicuring salon or shop, bathroom,
9 resthouse, theater, swimming pool, skating
10 rink, golf course, cafe, ice cream parlor,
11 transportation company, or hospital and
12 all other public amusement and business
13 establishments.

14 (b) Public accommodation does not include an
15 institution, club, or place of accommodation
16 that proves that it is by its nature
17 distinctly private. An institution, club, or
18 place of accommodation may not be considered
19 by its nature distinctly private if it has
20 more than 100 members, provides regular meal
21 service, and regularly receives payment for
22 dues, fees, use of space, facilities,

1 services, meals, or beverages, directly or
2 indirectly, from or on behalf of nonmembers,
3 for the furtherance of trade or business.
4 For the purposes of this subsection (15), any
5 lodge of a recognized national fraternal
6 organization is considered by its nature
7 distinctly private.

8 (16) "Sexual orientation" means
9 heterosexuality, bisexuality, or
10 homosexuality."

11 SECTION 4: New Section: There is hereby created a new section
12 of the Butte-Silver Bow Municipal Code (B-SB MC),
13 which shall read as follows:

14 "5.68.030 Employment discrimination prohibited.

15 A. No employer shall discriminate in the
16 employment, failure to hire, refusal to hire,
17 compensation, work classification, terms,
18 conditions, or privileges of employment,
19 including promotion, demotion, or termination
20 of employment.

21 B. No employer shall fail or refuse to refer
22 for employment, or give negative information to

1 a potential employer of an individual, in such a
2 manner that would deprive or limit an
3 individual's employment opportunities or that
4 would otherwise adversely affect an individual's
5 status as an applicant or prospective employee,
6 for a discriminatory reason.

7 C. No labor organization shall discriminate in
8 limiting membership, conditions of membership,
9 or termination of membership of any person in
10 any labor union or apprenticeship program.

11 D. No employment agency shall discriminate in
12 the procurement or recruitment of any person
13 for possible employment with an employer."

14 SECTION 5: New Section: There is hereby created a new section
15 of the Butte-Silver Bow Municipal Code (B-SB MC),
16 which shall read as follows:

17 "5.68.040 Discrimination in public accommodations
18 prohibited. It shall be unlawful for a place of
19 public accommodation to deny, directly or
20 indirectly, any person the full and equal access
21 enjoyment of the goods, services, activities,
22 facilities, privileges, advantages, and

1 accommodations for a discriminatory reason.”

2 SECTION 6: New Section: There is hereby created a new section
3 of the Butte-Silver Bow Municipal Code (B-SB MC),
4 which shall read as follows:

5 “5.68.050 Housing discrimination prohibited. It
6 is unlawful for any person, owner, manager,
7 employee, or any entity whose business includes
8 engaging in any residential real estate related
9 transactions to discriminate in the sale, lease
10 or rental of any housing facility, or to
11 otherwise discriminate in the terms, conditions,
12 maintenance, improvement or repair of any
13 housing facility. The rental of sleeping rooms
14 in a private residence designed as a single
15 dwelling unit in which the owner also resides is
16 excluded from this section provided that the
17 owner rents no more than three sleeping rooms
18 within the residence.”

19 SECTION 7: New Section: There is hereby created a new section
20 of the Butte-Silver Bow Municipal Code (B-SB MC),
21 which shall read as follows:

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"5.68.060 - Discrimination in educational institutions prohibited. It shall be unlawful for any educational institution to deny, restrict, abridge or condition the use of, or access to, any educational facilities or services to any person for a discriminatory reason."

SECTION 8: New Section: There is hereby created a new section of the Butte-Silver Bow Municipal Code (B-SB MC), which shall read as follows:

"5.68.070 - Retaliation prohibited. No person shall coerce, threaten, discharge, expel, blacklist, or otherwise retaliate against another person for opposing any practices prohibited by this chapter, 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 retaliate against a person for making a complaint or assisting in an

1 investigation or proceeding.”

2 SECTION 9: New Section: There is hereby created a new section
3 of the Butte-Silver Bow Municipal Code (B-SB MC),
4 which shall read as follows:

5 “5.68.080 - Posting Notices. Every employer,
6 business, or entity subject to this chapter shall
7 post in a conspicuous location a notice stating
8 “Discrimination on the basis of actual or
9 perceived race, color, national origin, ancestry,
10 religion, creed, sex, age, marital or familial
11 status, physical or mental disability, sexual
12 orientation, gender identity or expression is
13 prohibited by the Butte-Silver Bow Municipal
14 Code.” Entities subject to this chapter may
15 provide the notice by posting it where employee
16 notices are customarily placed.”

17 SECTION 10: New Section: There is hereby created a new section
18 of the Butte-Silver Bow Municipal Code (B-SB MC),
19 which shall read as follows:

20 “5.68.090 - Violation - penalty and civil remedy.

21 A. Any illegal discrimination specifically

1 addressed by Montana State law shall be
2 submitted to the Montana Department of Labor
3 pursuant to Title 49, Chapters 2 and 3, Montana
4 Code Annotated for processing by the State of
5 Montana. Pursuant to sections 3-6-103 and 3-11-
6 103 Montana Code Annotated it is intended that
7 violations of sections 5.68.010 through
8 5.68.090 of the Butte-Silver Bow Municipal
9 Code not specifically addressed by Montana
10 State law are to be civil municipal ordinance
11 violations intended to be enforceable solely by
12 the complaining person claiming a violation of
13 these sections or their authorized
14 representative through a civil proceeding
15 within the jurisdiction of the Butte-Silver Bow
16 Justice Court. The Montana Rules of Civil
17 Procedure shall apply, except and unless the
18 Butte-Silver Bow Justice Court establishes
19 alternative rules of civil procedure for
20 matters within the exclusive jurisdiction of
21 the Butte-Silver Bow Justice Court.

22 B. Any person claiming a violation of this

1 chapter may seek remedies, injunctive relief, or
2 other equitable relief by petition to the
3 Butte-Silver Bow Justice Court, or any other
4 court of competent jurisdiction. Any person
5 claiming a violation of this ordinance must seek
6 such relief within:

7 (1) 180 days of the last alleged
8 violation,

9 (2) 180 days of the conclusion of a
10 grievance proceeding initiated by the
11 complainant in accordance with a procedure
12 as established by a contract, written rule
13 or policy, or collective bargaining
14 agreement, or

15 (3) 300 days of the last alleged violation
16 if a grievance proceeding initiated by the
17 complainant in accordance with a procedure
18 as established by a contract, written rule
19 or policy, or collective bargaining
20 agreement has not been completed within 120
21 days of initiation of the proceeding.

22 The initiation of or the granting of relief

1 under a grievance procedure shall not
2 preclude or limit any other claims or
3 remedies available under this chapter.
4 Defendants shall not collect attorney's
5 fees unless the claim is clearly frivolous,
6 unreasonable, or factually groundless, or
7 the claimant continued to litigate after
8 the claim clearly became so.

9 C. In instances where the Butte-Silver Bow
10 Justice Court has found that the defendant in
11 any civil proceeding pursuant to this chapter
12 has violated a section of the chapter three or
13 more times within a twelve (12) month time
14 period, any fourth and subsequent violations
15 during any twelve (12) month time period may
16 also be charged and prosecuted as a misdemeanor
17 violation-and may be fined up to five hundred
18 dollars for each violation. There shall be no
19 imprisonment as a penalty for a violation of this
20 chapter."

21 SECTION 11: EFFECTIVE DATE: This ordinance shall be in full
22 force and effect from and after thirty (30) days

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after passage and approval.

PASSED THIS _____ DAY OF _____, 201_.

CINDI SHAW
CHAIRMAN OF THE COUNCIL OF COMMISSIONERS

APPROVED THIS _____ DAY OF _____, 201_.

MATT VINCENT
CHIEF EXECUTIVE

ATTEST:
SALLY J. HOLLIS
CLERK AND RECORDER

BY _____
TITLE _____

APPROVED AS TO FORM:

EILEEN JOYCE
COUNTY ATTORNEY

WILLIAM O. ANDERSEN
CHAIRMAN, JUDICARY COMMITTEE