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Reply to: Orlando

February 1, 2016

Via Email Only - Gregg.Lynk@pbfl.org

Greg Lynk, City Manager
City of Palm Bay
120 Malabar Road SE
Palm Bay, FL 32907

Re: Analysis of harms engendered by proposed “Human Rights Ordinance”

Dear Manager Lynk,

By way of brief introduction, Liberty Counsel is a non-profit litigation, education, and policy organization with an emphasis on religious liberty issues. We have offices in Lynchburg, Virginia; Washington, D.C.; and Orlando, Florida, and hundreds of affiliate attorneys around the nation.

We write at the request of concerned residents of the City of Palm Bay (“the City”), including pastors of local churches, business owners, parents of children, and others, regarding the proposed “Human Rights Ordinance” (“HRO” or “the Ordinance”) adding “sexual orientation” and “gender identity or expression” as part of Chapter 136, “Protection of Human Rights.” The Council should entirely reject calls to add homosexuality (“sexual orientation”) and cross-dressing (“gender identity” or “gender expression”) as protected classes to the Ordinance, for several reasons, some general and philosophical, and others found in the text of the HRO itself.

In general the Ordinance should be rejected, because sexual attractions are not necessarily innate, are subject to spontaneous change, and are influenced by our childhood environment. A decision to act on any attraction is at all times subject to moral choice. Biological sex cannot be changed, and one objectively “is” either male or female, not some third sex, as envisioned by the Ordinance. For these reasons, the categories of “sexual orientation” and “gender identity or expression” thus were and are rightfully not covered by Florida’s state-wide nondiscrimination law, nor the federal 1964 Civil Rights Act.¹ Finally, enshrining such ideas into law or policy creates an inevitable conflict with religious and

¹ The Civil Rights Act of 1964, Pub.L. 88–352, 78 Stat. 241, enacted July 2, 1964.

moral beliefs, because the Free Exercise of Religion actually *is* a protected category within both the Civil Rights Act, and the Constitution. See Amendment I, U.S. Constitution.

Turning to the text of the Ordinance, it is clear that if the ordinance sought to actually protect liberties, it is hopelessly flawed. That is not its intent, however.

First, HRO Section 136.02 “Definitions” instead enshrines into law radical notions of “sexual orientation,” “gender identity” and “gender expression.” In particular, the HRO “Gender Identity” definition replaces objective biological male and female sexes with a subjective, “deeply felt psychological identification” “as a man, woman **or some other gender**,” “which may or may not correspond to the **sex assigned to them at birth** (e.g., the sex listed on their birth certificate).” (Emphasis added). Basic, settled science (and basic reality) shows that sex is not arbitrarily “assigned at birth;” one simply *is* either male or female, and there is no “third gender.” The HRO “Gender Expression” definition elevates to a civil right a person’s decision to cross-dress or claim “gender identity” access to restrooms, lockers, and other private places.

Second, except for “religion,” the HRO will apply to churches for all “protected classes,” including “sexual orientation” and “gender identity or expression.” See HRO 136.12(F). Thus, churches-as-employers can’t even “elicit information” about “marital status,” “familial status,” “sexual orientation” or “gender identity.” Per HRO 136.13(a), if a church employee is the same “religion” as the church (as determined by the City), then if the church fires (or fails to hire) the employee based on any of those “protected classes” (unwed pregnancy, unwed cohabitation, fornication, or what the ordinance refers to as “sexual orientation” or “gender identity or expression” – homosexuality and crossdressing), then the church is in violation of the Ordinance. The church is forbidden even from “eliciting information” at any time about those potential conflicts between “religion” and the other classes.

Third, HRO 136.23 (B) says that the ordinance shall not apply to “lodge halls” or “similar” facilities which are open “periodically” or “occasionally” to the public, thus constituting a de facto ban on churches or their fellowship halls (if they are “similar” to a “lodge hall”) allowing non-member weddings or uses of fellowship halls beyond “occasionally” or “periodically,” which are vague terms. More than one non-member wedding? Then the church is arguably “open to the public,” covered by the HRO, and must allow a homosexual “wedding” to occur, or risk a lawsuit, for which the HRO provides attorney fees to the homosexual couple prevailing against the church.

Fourth, Section 136.23(D) also arguably requires churches with more than 400 members to allow homosexual weddings, if the church a) allows non-member weddings and b) provides food at the wedding; and c) charges a fee for the wedding. This would likely be considered a “trade or business,” as the church would be **“any institution, club, or place of accommodation which has more than four hundred (400) 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 the trade or business, shall not receive an exemption as a private club under this subdivision.”

Fifth, Section 136.23 “Exemptions” purports to maintain the privacy of restrooms and other places of public accommodation, but this is illusory: “(C) The provisions of this section relating to public accommodations do not prohibit discrimination on the basis of sex in **restrooms, shower rooms, bathhouses, and facilities used for urination, defecation, bathing and disrobing** which are by their nature private or dormitory lodging facilities, **provided that such determination of sex shall be consistent with an individual’s gender identity and expression.**” (Emphasis added). In the coded language of the radical left, this section means that claimed “gender identity or expression” controls over actual biological sex, for purposes of the access to restrooms, showers, bathhouses, and other facilities.

Similar language relates to employers’ grooming and dress standards (and restrooms) for employees: “Section 136.10. - Generally. (C) Nothing in this section shall be construed to establish a discriminatory practice based on sex **due to the denial of access to restrooms, shower rooms and facilities used for urination, defecation, bathing and disrobing which are by their nature private**, provided that the employer... provides reasonable access to adequate facilities that are **not inconsistent with the employee’s sex** as established with the employer... **at the time of employment or upon written notification ...** by a medical provider **that the person has undergone or is undergoing sex or gender transition and currently identifies as male or female gender.**” The HRO establishes that an employee’s sex is whatever that “transitioning” employee (or any doctor in the country) says his or her sex is, and female employees, for example, who object to sharing restrooms with a crossdressing man have no recourse.

HRO Section 136.10 (E) states that “nothing in this article shall prohibit an employer... from requiring an employee, during the employee’s hours at work, to **adhere to reasonable dress or grooming standards** not prohibited by other provisions of federal, state, or local law, provided that the employer... permits any employee who has undergone sex or gender transition prior to the time of employment, and any employee **who has provided written notification** to the employer by a medical provider **that the person has undergone or is undergoing sex or gender transition and currently identifies as male or female gender to adhere to the same dress or grooming standards for the sex or gender to which the employee has transitioned or is transitioning.**” (Emphasis added). Thus, an employer must allow an employee, upon demand, to dress in drag, regardless of the effect on customers or impressionable minor children. Note that Section 136.21(F) includes within “Public Accommodation” “hospitals, **nurseries, schools, libraries or educational facilities** supported in part or whole by public funds, **kindergartens, day care centers.**” (Emphasis added).

The harm flowing from other HROs where the category of “gender identity” in particular has been adopted is not speculative. Other HROs have led to documented harms consisting of **a) confused (at best, and fetishist at worst) [cross-dressing adult role models being placed before children](#)** in years formative to the children’s own identities; **b) [biological](#)**

[adult males being given free reign to invade private spaces of women and girls](#); and **c) a chilling effect on student and employee expression of Christian sexual ethics and moral values**, in violation of the First Amendment.

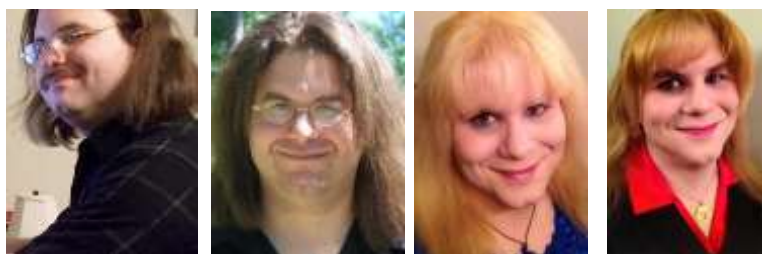
The following examples would be promoted and legalized by the proposed HRO:

Locker Example - Clay Scott “Colleen” Francis: Lewd exhibitionist male cross-dresser Clay Scott Francis engaged in “gender identity or expression” under Washington’s “nondiscrimination” law by **“sitting with her [sic] legs open with her [sic] male genitalia showing”** in the Evergreen State College women’s locker room **in front of women and schoolgirls from local schools**, which used the College swim team facilities. His interpretation of what was permitted by the “gender identity or expression” law and policy was adopted by Evergreen State College, as well as the Thurston County prosecutor’s office, despite the actual presence of minors. He remains free to continue doing so today. Further details of his case are discussed in the [November 2, 2012 letter to the Thurston County, WA prosecutor’s office](#). HRO 136.23 would protect the “right” of a “Colleen Francis” to continue this behavior in Palm Bay over the objections of female employees, teachers and minor students.²



Employment Example - Martin

“Marty” Ortiz: Employed at a **Wal-Mart** in Billings, Montana, Mr. Ortiz engaged in “gender identity or expression” by cross-dressing on the job, and insisting on using the women’s restroom over the objections of nearly 40



female employees. The offensive behavior of Mr. Ortiz included actions such as **urinating in the women’s restroom while standing up, with the stall door open, and refusing to use the single-space “family” restroom**. HRO 136.10 (C) would enshrine the “right” of a “Marty Ortiz” to do so in Palm Bay over the objections of female coworkers, and over the objection of a concerned supervisor.

Classroom Example - Andrew M. Peterson: A kindergarten teacher in the Clark County, Nevada, school district, Mr. Peterson was **permitted to teach a kindergarten class while engaging in distracting “gender identity or expression” by cross-dressing in class**. Pictured at the beginning of his “transition,” Mr. Peterson ultimately sported a highlighted woman’s hair cut; a woman’s blouse; makeup including rouge and lip-gloss; and eyebrows plucked and shaped like a woman’s. His dress, along with his speech in a contrived falsetto voice caused children to be confused as to his sex. Some children thought he was a



² <http://gendertrender.wordpress.com/2012/10/07/olympia-wa-school-officials-state-gender-identity-provision-overrides-title-ix-equality-for-girls-swim-teams/>

man, and others, a woman. Numerous parents sought to transfer their children to another teacher's class, but were refused by the school district. One five-year-old became upset each time his mother referred to the teacher as "Mr. Peterson," siding with the teacher, and stating that he was "a girl," thus forcing the mom to choose between telling her son a lie, and telling her son about cross-dressing and sexuality, subjects which are inappropriate and harmful for a five-year-old, and which contradicted the family's religious, ethical and moral beliefs. HRO Section 136.21(F) would secure the right of another "Mr. Peterson" to confuse students over the objections of parents by cross-dressing in class, and HRO Sections 136.10 (C) and (E) would allow him to use bathrooms, locker rooms, and other private facilities over the objections of female coworkers.

Child Rapist Example - Paul Ray "Paula"

Witherspoon: Mr. Witherspoon, a convicted serial child rapist, engaged in "gender identity or expression" by frightening a woman in a hospital restroom designated for use by women and girls. Witherspoon was wearing earrings, a skirt, and a large bulky ankle GPS device worn by paroled felons considered likely to re-offend. His parole had been previously revoked at least twice: in 2007 when Witherspoon was charged with assault and returned to prison until 2010, and again when he was arrested in 2011 for sending out pornographic photos of himself over the internet. Nevertheless, Lambda Legal representative Ken Upton claimed that pedophilic male serial sex offenders like Mr. Witherspoon should be allowed to access private women and girls' facilities regardless of legal gender status as long as he and other men are **"using the bathroom in a way that is consistent with the gender that they live in day in and day out"**.³ HRO Section 136.23(C) would make it illegal to deny Witherspoon the use of bathrooms, locker rooms, and other private facilities over the objections of women and girls.



Proponents of the HRO, particularly its portions addressing "gender identity," are aware that they could never prevail in court. In fact, numerous courts have dismissed cases of alleged "discrimination" brought by cross-dressing individuals claiming "gender identity" access to private facilities such as restrooms, because a policy of limiting bathroom and locker room facilities on the basis of birth sex is "substantially related to a sufficiently important government interest." *Glenn v. Brumby*, 663 F.3d 1312, 1316 (11th Cir.2011) (quoting *Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 446-47, (1985)). Such a policy is based on the need to ensure privacy to disrobe, shower or use the restroom outside of the presence of members of the opposite sex. This justification has been repeatedly upheld by courts. See, e.g., *Etsitty v. Utah Transit Auth.*, 502 F.3d 1215, 1224 (10th Cir.2007) (the use of women's public restrooms by a biological, cross-dressing male could result in liability for employer, and such a motivation constitutes a legitimate, nondiscriminatory reason); *Casey v. Ford Motor Co.*, 516 F.2d 416 (5th Cir.1975)

³ <http://www.nbcdfw.com/news/local/Transgender-Woman-Convictions-Irrelevant-to-Citation-149923975.html>

Conclusion:

The HRO is unconstitutionally vague on its face in many areas. The HRO forces churches to limit employment decisions to “religion” as determined by the City, and applies all other “protected classes” (including homosexuality and cross-dressing) to churches. The ordinance unconstitutionally burdens individual employers or owners of places of public accommodation, by requiring the admission of “transitioning” employees and customers into opposite-sex restrooms. Section 136.21(F) of the ordinance would tie the hands of schools and kindergartens in preventing cross-dressing in the classroom, and Section 136.04 gives individuals claiming a transgender identity or homosexual orientation a private right of action, complete with attorney fees upon successful litigation, against churches and businesses.

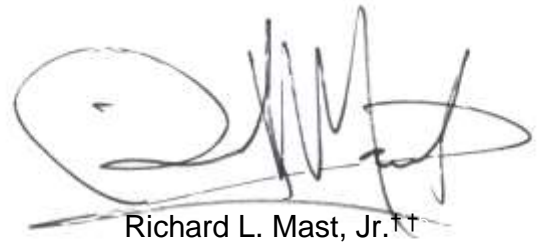
As seen with bakeries, florists, sign shops, and numerous others around the nation, the Palm Bay HRO is intended to be used as a sword against Palm Bay churches and others who object to facilitating homosexual “weddings,” and Palm Bay public accommodations or businesses whose owners hold sincere religious, moral, and safety objections against allowing men into areas reserved for women, or about protecting children from gender confusion by harmful role models.

The City of Palm Bay should reject misguided proposals to create unnecessary, harmful and divisive “protected classes” out of homosexuality and cross-dressing. If the City nonetheless proceeds with enacting the HRO, Liberty Counsel is prepared to take further action to prevent irreparable harm to cherished liberties.

Sincerely,



Roger K. Gannam†



Richard L. Mast, Jr.††

CC:

Via Email:

- Mayor Capote - mayor@pbfl.org
- Deputy Mayor Bailey - seat5@pbfl.org
- Councilman Santiago - seat2@pbfl.org
- Councilwoman Paccione - seat3@pbfl.org
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ORDINANCE NO. 2016-

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, TITLE XIII, GENERAL OFFENSES, BY CREATING A NEW CHAPTER 136, TO BE TITLED “PROTECTION OF HUMAN RIGHTS”; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR INCLUSION IN THE CITY OF PALM BAY CODE OF ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, it is a matter of concern to the City Council of the City of Palm Bay to protect and safeguard the right and opportunity of all individuals to be free from all forms of discrimination, including discrimination based on age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression; and that the City Council’s purpose in enacting this chapter is to promote the public health and welfare of all individuals who live in, visit, and work in the City of Palm Bay; and that it is important to ensure that all individuals within the City of Palm Bay have equal access to employment, housing, and public accommodations, and

WHEREAS, it is the desire of the board to foster and encourage the growth and development of the City of Palm Bay in a manner that will ensure all individuals an equal opportunity to live free of discrimination imposed by age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression; and that discriminatory practices are contrary to the public policy of the City of Palm Bay and are a menace to the public health and welfare of our citizens and, as such, the City Council shall direct its efforts toward eliminating

discriminatory practices within the City of Palm Bay in the areas of employment, housing, and public accommodations where they exist, and

WHEREAS, the general purpose of this chapter is to secure for all individuals within the City of Palm Bay freedom from discrimination because of age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression, and thereby to protect their interest in personal dignity, to make the City of Palm Bay secure against strife and unrest, to preserve the public safety, health, and general welfare, and to promote the interests, rights, privileges of individuals within the City of Palm Bay, and, in an effort to accomplish this purpose, to create a private cause of action to all individuals in the City of Palm Bay against such discriminatory practices.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. The City of Palm Bay Code of Ordinances, Title XIII, General Offenses, is hereby amended by creating a new Chapter 136, to be titled “Protection of Human Rights”, which shall read as follows:

"CHAPTER 136: PROTECTION OF HUMAN RIGHTS"

GENERAL PROVISIONS

Section 136.01 TITLE.

This ordinance shall be known and may be cited as the “Protection of Human Rights Ordinance”.

Section 136.02 DEFINITIONS.

The following words, terms, and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section, except where context clearly indicates a different meaning or a different meaning is given under another section or ordinance:

AGE. The chronological age greater than or equal to eighteen (18) years.

AGGRIEVED INDIVIDUAL. Any individual who claims to have been injured by a discriminatory practice.

COUNCIL. The City Council of the City of Palm Bay.

DISABILITY, with respect to an individual, shall mean:

(A) A physical or mental impairment that substantially limits one (1) or more of the major life activities of such individual;

(B) A record of impairment that substantially limits one (1) major life activities of such individual;

(C) Being regarded as having an impairment that substantially limits one (1) or more of the major life activities of such individual;

(D) Having a developmental disability as defined in section 393.063(9), Florida Statutes (2015) or as such section may thereafter be amended.

DISCRIMINATORY PRACTICE. Any practice or act made unlawful or which is otherwise prohibited by this ordinance.

FAMILIAL STATUS. An individual's status established when such individual who has not attained the age of eighteen (18) years is domiciled with (i) a parent or other individual having legal custody of such individual; or (ii) a designee of a parent or other individual having legal custody, with written permission of such parent or other individual. The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of eighteen (18) years.

GENDER EXPRESSION. All of the external characteristics and behaviors that are socially defined as either masculine or feminine, such as dress, grooming, mannerisms, speech patterns and social interactions. Social or cultural norms can vary widely and some characteristics that may be accepted as masculine, feminine or neutral in one culture may not be assessed similarly in another.

GENDER IDENTITY. A person's innate, deeply felt psychological identification as a man, woman or some other gender, which may or may not correspond to the sex assigned to them at birth (e.g., the sex listed on their birth certificate).

MARITAL STATUS. An individual's status of being married, separated, or unmarried, including being single, divorced or widowed.

NATIONAL ORIGIN. The national origin of an ancestor or the country of origin of an individual's forebearers, naturally, by marriage, or by adoption, including citizenship status, ancestry, place of birth, and language characteristics thereof.

PERSON. An individual, association, corporation, joint apprenticeship committee, joint stock company, labor organization, legal representative, mutual company, partnership, receiver, trust, fiduciary, trustee in bankruptcy, unincorporated organization or any other legal or commercial entity; provided, however, a person shall not mean or include any federal, state, or local government entity, or any agency or unit of such entities to which the absolute protection of sovereign immunity extends.

RELIGION. All aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

RELIGIOUS ORGANIZATION. A religious corporation, association, or society.

SEXUAL ORIENTATION. An individual's actual or perceived heterosexuality, homosexuality, or bisexuality.

Section 136.03 GENERAL DISCRIMINATORY PRACTICES.

In addition to those discriminatory practices made unlawful by this ordinance, the following discriminatory practices shall be unlawful:

(A) It shall be unlawful for a person to retaliate or discriminate in any manner against an individual because such individual opposed a practice prohibited by this ordinance or prohibited by existing federal or state law prohibiting discrimination; or to retaliate or discriminate in any manner against an individual because such individual has filed a complaint, testified, assisted or participated in any manner in any investigation, proceedings, hearing or conference under this ordinance or under any federal or state law prohibiting discrimination.

(B) It shall be unlawful to coerce, intimidate, threaten or interfere with any individual in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this ordinance.

Section 136.04 PRIVATE CAUSE OF ACTION; REMEDIES.

(A) An aggrieved individual may, under this ordinance, commence a civil action in a court of competent jurisdiction against the person alleged to have committed a discriminatory practice; provided, however, that such civil action must be filed no later than four (4) years after the discriminatory practice is alleged to have been committed per section 95.11(3)(p), Florida Statutes (2015).

(B) If, in a civil action commenced under this ordinance, the court finds that a discriminatory practice has been committed, the court may issue an order prohibiting the discriminatory practice and providing affirmative relief from the effects of the discriminatory practice including, but not limited to, a temporary or permanent injunction or other equitable relief, an award of actual damages reasonable attorney's fees, interest, and costs, or other such relief as the court deems appropriate, including punitive damages when applicable per sections 768.72, 768.725, 768.73 and 768.735, Florida Statutes (2015).

Section 136.05 SOVEREIGN IMMUNITY; NO WAIVER OF RIGHTS OR REMEDIES AT LAW.

(A) Pursuant to Article X, Section 13, Florida Constitution and section 768.28, Florida Statutes (2015), nothing in this ordinance shall be deemed to be a provision for bringing suit against the state or otherwise be deemed to be a waiver of sovereign immunity for the State of Florida, Brevard County, the City of Palm Bay or any other "state agencies or subdivisions" as defined in section 768.28(2), Florida Statutes (2015).

(B) Nothing in this ordinance shall be construed to prohibit any sovereignly immune entity from adopting its own internal policies and rules to prohibit discriminatory practices and acts and to resolve allegations or complaints of such discriminatory practice and acts to the extent allowed by law. The City of Palm Bay specifically adopts this ordinance as applicable to the government of the City of Palm Bay.

(C) Nothing in this ordinance shall be deemed to modify, impair, or otherwise affect any other right or remedy conferred by the constitution or laws of the United States or the State of Florida, and the provisions of this ordinance shall be deemed to be in addition to those provided by such other laws.

EMPLOYMENT DISCRIMINATION

Section 136.10 GENERALLY.

(A) The general purpose of this ordinance is to secure for all individuals within the City of Palm Bay the freedom from discrimination because of age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression, in connection with employment, and thereby to promote the interests, rights and privileges of individuals within the City of Palm Bay.

(B) Nothing in this section shall be construed to limit an employer, employment agency or labor organization from taking adverse action against an individual because of a charge of harassment against that individual, provided that rules and policies on harassment, including when adverse action is taken, are designed for, and uniformly applied to, all individuals regardless of age, race, color, religion, national origin, disability, marital status, familial status, sexual orientation, or gender identity and expression.

(C) Nothing in this section shall be construed to establish a discriminatory practice based on sex due to the denial of access to restrooms, shower rooms and facilities used for urination, defecation, bathing and disrobing which are by their nature private, provided that the employer, employment agency or labor organization provides reasonable access to adequate facilities that are not inconsistent with the employee's sex as established with the employer, employment agency or labor organization at the time of employment or upon written notification to the employer by a medical provider that the person has undergone or is undergoing sex or gender transition and currently identifies as male or female gender.

(D) Nothing in this section shall be construed to require the construction of new or additional facilities.

(E) Nothing in this section shall prohibit an employer, employment agency or labor organization from requiring an employee, during the employee's hours at work, to adhere to reasonable dress or grooming standards not prohibited by other provisions of federal, state, or local law, provided that the employer, employment agency or labor organization permits any employee who has undergone sex or gender transition prior to the time of employment, and any employee who has provided written notification to the employer by a medical provider that the person has undergone or is undergoing sex or gender transition and currently identifies as male or female gender to adhere to the same dress or grooming standards for the sex or gender to which the employee has transitioned or is transitioning.

(F) Nothing in this section shall be construed to require an employer, employment agency or labor organization to treat an unmarried couple in the same manner as the employer, employment agency or labor organization treats a married couple for the purposes of employee benefits; provided, however, that nothing in this section shall be construed to prohibit an employer, employment agency or labor organization from adopting its own internal policies and rules to treat an unmarried couple in the same manner as the employer, employment agency or labor organization treats a married couple.

(G) Nothing in this section shall be construed to repeal or modify any federal, state, or local law creating a special right or preference concerning employment for a veteran.

Section 136.11 DEFINITIONS.

The following words, terms and phrases, when used in this section, shall have the following meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

COMPENSATION AND TERMS, CONDITIONS, OR PRIVILEGES OF EMPLOYMENT.

These words, terms and phrases are used interchangeably and shall encompass all employee benefits, including such benefits provided pursuant to a *bona fide* employee benefit plan.

EMPLOYEE. An individual employed by an employer.

EMPLOYER. Any person who has five (5) or more employees for each working day in each of four (4) or more calendar weeks in the current or preceding calendar year, and any such agent of such a person.

EMPLOYMENT AGENCY. Any person regularly undertaking, with or without compensation, to procure employees for an employer or to procure for employees opportunities to work for an employer, and includes an agent of such a person.

LABOR ORGANIZATION. Any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or other mutual aid or protection in connection with employment.

RELIGION. All aspects of religious observance and practice, as well as belief, unless an employer demonstrates that the employer is unable to reasonably accommodate an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

Section 136.12 UNLAWFUL EMPLOYMENT PRACTICES.

(A) It shall be a discriminatory practice for an employer to:

(1) Fail or refuse to hire, promote, or otherwise discriminate against an individual with respect to compensation or the terms, conditions, or privileges of employment because of age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression; or

(2) Limit, segregate, or classify an employee in a way which would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect the status of an employee because of age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression.

(3) Discharge or take adverse action against an employee because of age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression.

(B) It shall be a discriminatory practice for an employment agency to:

(1) Fail or refuse to refer for employment or otherwise discriminate against an individual on the basis of age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression;

(2) Classify or refer for employment an individual on the basis of age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression; or

(3) Cause, assist, or attempt to cause or assist an employer to violate any provision of this section.

(C) It shall be a discriminatory practice for a labor organization to:

(1) Exclude or to expel from membership or otherwise discriminate against any individual on the basis of age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression;

(2) Limit, segregate, or classify membership or applicants for membership, or to classify or to fail or refuse to refer an individual for employment in a way which would deprive or tend to deprive, limit, or adversely affect an individual's employment opportunities on the basis of age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression; or

(3) Cause, assist, or attempt to cause or assist an employer to violate any provision of this section.

(D) It shall be a discriminatory practice for an employer, employment agency, labor organization, or a training committee associated with an employer, employment agency, or labor organization to discriminate against an individual on the basis of age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression, in a training program providing apprenticeship or other training.

(E) It shall be a discriminatory practice for an employer, employment agency, or labor organization to publish an advertisement relating to employment, indicating a preference, limitation, specification, or discrimination on the basis of age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression.

(F) Except as permitted and required by regulations of the City of Palm Bay, or by applicable federal or state law, it shall be a discriminatory practice for an employer, employment agency, or labor organization to elicit information about an employee's age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression, or to keep or disclose a record of such information for the purposes of effecting discrimination.

Section 136.13 EXEMPTIONS.

(A) The provisions of this section prohibiting discrimination on the basis of religion shall not apply to a corporation, association, educational institution, or society that is exempt from the religious discrimination provisions of title VII of the Civil Rights Acts of 1964 pursuant to section 702(a) of such Act (42 U.S.C. 2000e-1(a)), or as such section may hereafter be amended. Any such corporation, association, educational institution, or society may limit its employment and membership to persons of the same religion or may give preference to any such person. However, that corporation, association, educational institution or society shall not restrict employment based on other categories protected under this ordinance.

(B) Notwithstanding any other provision of this section, it shall not be a discriminatory practice under this section for a school, college, university, or other educational institution or institution of learning to hire and employ individuals of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a

particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

(C) Notwithstanding any other provision of this section, it shall not be a discriminatory practice under this section for an employer, employment agency, labor organization to:

(1) Take or fail to take any action on the basis of age, race, marital status, religion, national origin, disability, familial status, sex, or sexual orientation in those certain instances in which age, race, color, religion, national origin, absence of a particular disability, marital status, familial status, sex, sexual orientation, or gender identity and expression are *bona fide* occupational qualifications reasonably necessary for the performance of the particular employment to which such action or inaction is related.

(2) Observe the terms of a *bona fide* seniority system, a *bona fide* employee benefit plan such as a retirement, pension, or insurance plan, or a system which measures earnings by quantity or quality of production, which is not designed, intended, or used to evade the purposes of this section. However, no such employee plan or system which measures earnings shall excuse the failure to hire, and no such seniority system, employee benefit plan, or system which measures earnings shall excuse the involuntary retirement of, any individual on the basis of any factor not related to the ability of such individual to perform the particular employment for which such individual has applied or in which such individual is engaged. This subsection shall not be construed to make unlawful the rejection or termination of employment when the individual applicant or employee has failed to meet *bona fide* requirements for the job or position sought or held or to require any changes in any *bona fide* retirement or pension programs or existing collective bargaining agreements during the life of the contract, or for two (2) years after October 1, 1981, which occurs first, nor shall this section preclude such physical and medical examinations of applicants and employees as an employer may require of applicants and employees to determine fitness for the job or position sought or held.

(3) Give and act upon the results of any professionally developed or validated ability test, provided that such test, its administration, or action upon the results, is not designed, intended, or used to discriminate because of age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression.

(4) Take or fail to take any action on the basis of age, pursuant to law or regulation governing any employment or training program designed to benefit individuals of a particular age group.

(5) Take or fail to take any action on the basis of marital status if that status is prohibited under its anti-nepotism policy.

EQUAL ACCESS TO PLACES OF PUBLIC ACCOMMODATIONS

Section 136.20 GENERALLY.

The general purpose of this ordinance is to secure for all individuals within the City of Palm Bay the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination because of age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression, and thereby to promote the interests, rights and privileges of all individuals within the City of Palm Bay.

Section 136.21 DEFINITIONS.

The following words, terms and phrases, when used in this section, shall have the following meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

OPERATOR. Any owner, lessee, proprietor, manager, superintendent, agent, or occupant of a place of accommodation or an employee or independent contractor of any such person.

PUBLIC ACCOMMODATION. A place of public accommodation owned or operated by a person including, but not limited to, lodgings, facilities principally engaged in selling food for consumption on the premises, gasoline stations and places of exhibition or entertainment. Each of the following establishments owned or operated by a person and which serve the public is a place of public accommodation within the meaning of this section:

(A) Any inn, hotel, motel, resort or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than four (4) rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his or her residence.

(B) Any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, buffet or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment, or any gasoline station.

(C) Any tavern, bar, liquor lounge, package store or other facility holding a license for the sale of alcoholic beverages issued by the division of alcoholic beverages and tobacco of the department of business and professional regulation of the state, and which serves or which holds itself out as serving the general public.

(D) Any pool or billiard hall, bowling alley, motion picture house, theater, concert hall, sports arena, place of amusement, skating rink, amusement park, golf courses, swimming pool, or other place of exhibition or entertainment.

(E) Any gasoline station, retail establishment, convenience store, beauty parlor, barbershop, styling salon, or laundries.

(F) Facilities, or portions of facilities, when open to the general public, including, but not limited to: hospitals, nurseries, schools, libraries or educational facilities supported in part or whole by public funds, kindergartens, day care centers.

(G) Any transportation conveyance open to the general public, including, but not limited to: taxis, limousines, trains, and buses.

(H) Any professional office, generally open to the public, such as those of attorneys, physicians, dentists, architects, or accountants.

(I) Any establishment which is physically located within the premises of any establishment otherwise covered by this section, or within the premises of which is physically located any such covered establishment, and which holds itself out as serving patrons of such covered establishment.

Section 136.22 PROHIBITION OF DISCRIMINATION IN PUBLIC ACCOMMODATIONS.

(A) It is a violation of this section for a person who owns or operates a place of public accommodation, whether personally or through the actions of an employee or independent contractor, to deny or refuse to another individual the full and equal enjoyment of the facilities and services of any place of public accommodation on the basis of that individual's age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression.

(B) It is a violation of this section for a person who owns or operates a place of public accommodation, either personally or through the actions of an employee or independent contractor, to display or publish any written communication with respect to the provision of services that indicates any preference, limitation or discrimination based on that individual's age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression.

Section 136.23 EXEMPTIONS.

(A) The provisions of this section shall not apply to lodge halls or other similar facilities of private organizations which are available for public use occasionally or periodically.

(B) The provisions of this section shall not prohibit a religious organization or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization from limiting the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodations which it owns or operates, other than for a commercial purpose, to individuals of the same religion, or from giving preference to such individuals. However, that corporation, association, educational institution or society shall not discriminate in public accommodation based on other categories protected under this ordinance.

(C) The provisions of this section relating to public accommodations do not prohibit discrimination on the basis of sex in restrooms, shower rooms, bathhouses, and facilities used for urination, defecation, bathing and disrobing which are by their nature private or dormitory lodging facilities, provided that such determination of sex shall be consistent with an individual's gender identity and expression.

(D) The provisions of this section shall not apply to any private club or other establishment which is not, in fact, open to the public, except to the extent that the goods, services, facilities, privileges, advantages, or accommodations of the establishment are made available to the customers or patrons of another establishment which is a place of public accommodation. However, any institution, club, or place of accommodation which has more than four hundred (400) 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 the trade or business, shall not receive an exemption as a private club under this subdivision.

(E) The provisions of this section shall not be construed as prohibiting the giving of special discounts on goods and services by a place of public accommodation, provided such goods and services, at other than such special discount rates, are not denied to individuals on the basis of age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression, unless such denial is pursuant to the laws of the United States, State of Florida, Brevard County or the City of Palm Bay.

(F) The provisions of this section when applied to the physical characteristics of a public accommodation shall never be interpreted to give rise to a requirement which is more stringent than those found in the Americans with Disabilities Act of 1990.

FAIR HOUSING

Section 136.30 GENERALLY.

The general purpose of this section is to promote through fair, orderly, and lawful procedure the opportunity for each individual so desiring to obtain housing of such individual's choice in the City of Palm Bay without regard to race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression, and, to that end, to prohibit discrimination in housing by any person.

Section 136.31 DEFINITIONS.

The following words, terms and phrases, when used in this section, shall have the following meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

COVERED MULTIFAMILY DWELLING.

(A) A building which consists of four (4) or more units and has an elevator; or

(B) The ground floor of a building which consists of four (4) or more units and does not have an elevator.

DWELLING. Any building or structure, or portion thereof, which is occupied as, or designed or intended for occupancy as, a residence by one (1) or more families, and any vacant land which is offered for sale or lease for the construction or location on the land of any such building or structure, or portion thereof.

Family shall include a single individual.

FCHR. Florida Commission on Human Relations or any of its successor organizations.

LENDING INSTITUTION. Any bank, insurance company, savings and loan association or any other person or organization regularly engaged in the business of lending money, guaranteeing loans, or sources of credit information, including, but not limited to, credit bureaus.

MANAGER shall mean the manager of the housing and community development division of the county, and/or the manager's designee.

RENT. Includes to lease, to sublease, to let, and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

Section 136.32 Discrimination in the sale or rental of housing and prohibited practices.

(A) It shall be unlawful to refuse to sell or rent after the making of a *bona fide* offer, to refuse to negotiate for the sale or rental of, or otherwise to make unavailable or deny a dwelling to any individual because of age, race, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression.

(B) It shall be unlawful to discriminate against any individual in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression. Prohibited actions under this subsection include, but are not limited to:

(1) Using different provisions in leases or contracts of sale, such as those relating to rental charges, security deposits and the terms of a lease and those relating to down payment and closing requirements, because of age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression.

(2) Failing or delaying maintenance or repairs of sale or rental dwellings because of age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression.

(3) Failing to process an offer for the sale or rental of a dwelling or to communicate an offer accurately because of age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression.

(4) Limiting the use of privileges, services or facilities associated with a dwelling because of age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression of an owner, tenant or a person associated with him or her.

(5) Denying or limiting services or facilities in connection with the sale or rental of a dwelling, because an individual failed or refused to provide sexual favors.

(C) It shall be unlawful to make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression, or an intention to make any such preference, limitation, or discrimination. The prohibitions in this subsection shall apply to all written or oral notices or statements by a person engaged in the sale or rental of a dwelling. Written notices and statements include any applications, flyers, brochures, deeds, signs, banners, posters, billboards or any documents used with respect to the sale or rental of a dwelling. Discriminatory notices, statements and advertisements include, but are not limited to:

(1) Using words, phrases, photographs, illustrations, symbols or forms which convey that dwellings are available or not available to a particular group of individuals because of age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression.

(2) Expressing to agents, brokers, employees, prospective sellers or renters or any other individuals a preference for or limitation on any purchaser or renter because of age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression of such individuals.

(3) Selecting media or locations for advertising the sale or rental of dwellings which deny particular segments of the housing market information about housing opportunities because of age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression.

(4) Refusing to publish advertising for the sale or rental of dwellings or requiring different charges or terms for such advertising because of age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression.

(D) It shall be unlawful to represent to any individual because of age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(E) It is unlawful, for profit, to induce or attempt to induce any individual to sell or rent any dwelling by a representation regarding the entry or prospective entry into the neighborhood of an individual or individuals of a particular age, race, color, religion, national

origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression.

(F) It shall be unlawful, because of age, race, color, religion, national origin, marital status, familial status, disability, sex, sexual orientation, or gender identity and expression, to restrict or attempt to restrict the choices of an individual by word or conduct in connection with seeking, negotiating for, buying or renting a dwelling so as to perpetuate, or tend to perpetuate, segregated housing patterns, or to discourage or obstruct choices in a community, neighborhood or development. Prohibited actions under this subsection that are generally referred to as unlawful steering practices include, but are not limited to:

(1) Discouraging any individual from inspecting, purchasing or renting a dwelling because of age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression, or because of the age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression of individuals in a community, neighborhood or development.

(2) Discouraging the purchase or rental of a dwelling because of age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression, by exaggerating drawbacks or failing to inform any individual of desirable features of a dwelling or of a community, neighborhood, or development.

(3) Communicating to any prospective purchaser that he or she would not be comfortable or compatible with existing residents of a community, neighborhood or development because of age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression.

(4) Assigning any individual to a particular section of a community, neighborhood or development, or to a particular floor of a building, because of age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression.

(G) It shall be unlawful, because of age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression, to engage in any conduct relating to the provision of housing or of services and facilities in connection therewith that otherwise makes unavailable or denies dwellings to individuals. Prohibited activities relating to dwellings under this subsection include, but are not limited to:

(1) Discharging or taking other adverse action against an employee, broker or agent because he or she refused to participate in a discriminatory housing practice.

(2) Employing codes or other devices to segregate or reject applicants, purchasers or renters, refusing to take or to show listings of dwellings in certain areas because of age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression, or refusing to deal with certain brokers or agents because they or one (1) or more of their clients are of a particular age, race, color, religion,

national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression.

(3) Denying or delaying the processing of an application made by a purchaser or renter or refusing to approve such an individual for occupancy in a cooperative or condominium dwelling because of age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression.

(4) Refusing to provide municipal services or property or hazard insurance for dwellings or providing such services or insurance differently because of age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression.

(H) The protections afforded under this section against discrimination on the basis of familial status apply to any individual who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of eighteen (18) years.

(I) It shall be unlawful to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of:

(1) That buyer or renter;

(2) An individual residing in or intending to reside in that dwelling after it is sold, rented, or made available; or

(3) Any person associated with the buyer or renter.

(J) It shall be unlawful to discriminate against any individual in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability of:

(1) That buyer or renter;

(2) An individual residing in or intending to reside in that dwelling after it is sold, rented, or made available; or

(3) Any individual associated with the buyer or renter.

(K) For purposes of subsections (i) and (j), discrimination includes:

(1) A refusal to permit, at the expense of the disabled individual, reasonable modifications of existing premises occupied or to be occupied by such individual if such modifications may be necessary to afford such individual full enjoyment of the premises; or

(2) A refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such individual equal opportunity to use and enjoy a dwelling.

(L) Covered multifamily dwellings as defined herein which are intended for first occupancy after March 13, 1991, shall be designed and constructed to have at least one (1) building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site as determined by FCHR rule. Such buildings shall also be designed and constructed in such a manner that:

(1) The public use and common use portions of such dwellings are readily accessible to and usable by disabled individuals.

(2) All doors designed to allow passage into and within all premises within such dwellings are sufficiently wide enough to allow passage by an individual in a wheelchair.

(3) All premises within such dwellings contain the following features of adaptive design:

(a) An accessible route into and through the dwelling.

(b) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations.

(c) Reinforcements in bathroom walls to allow later installation of grab bars.

(d) Usable kitchens and bathrooms such that a person in a wheelchair can maneuver about the space.

(4) For purposes of subsection (3), compliance with the appropriate requirements of the American National Standards Institute for buildings and facilities providing accessibility and usability for physically handicapped people, commonly cited as ANSI A117.1-2009, or as such standards may thereafter be amended, suffices to satisfy the requirements therein.

(5) State agencies with building construction regulation responsibility or local governments, as appropriate, shall review plans and specifications for the construction of covered multifamily dwellings to determine consistency with the requirements of subsection (1).

Section 136.33 Discrimination in the provision of brokerage services.

It shall be unlawful to deny any individual access to, or membership or participation in, any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him or her in the terms or conditions of such access, membership, or participation, on the basis of age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression.

Section 136.34 Discrimination in the financing of housing or in residential real estate transactions.

(A) It shall be unlawful for any bank, building and loan association, insurance company, or other corporation, association, firm, or enterprise the business of which consists in whole or in part of the making of commercial real estate loans to deny a loan or other financial assistance to an individual applying for the loan for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against him or her in the fixing of the amount, interest rate, duration, or other term or condition of such loan or other financial assistance, because of the age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression of such individual or of any individual associated with him or her in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance, or because of the age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given.

(B) Residential real estate transactions.

(1) It shall be unlawful for any person or entity whose business includes engaging in residential real estate transactions to discriminate against any individual in making available such a transaction, or in the terms or conditions of such a transaction, because of age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression.

(2) As used in this subsection, the term "residential estate transaction" means any of the following;

(a) The making or purchasing of loans or providing other financial assistance (i) for purchasing, constructing, improving, repairing, or maintaining a dwelling; or (ii) secured by residential real property.

(b) The selling, brokering, or appraising of residential real property.

Section 136.35 EXEMPTIONS.

(A) Single-family and multifamily dwellings.

(1) Nothing in this section applies to:

(a) Any single-family house sold or rented by its owner, provided such private individual owner does not own more than three (3) single-family houses contemporaneously. In case of the sale of a single-family house by a private individual owner who does not reside in such house at the time of the sale or who was not the most recent resident of the house prior to sale, the exemption granted by this subsection applies only with respect to one (1) sale within any 24-month period. In addition, the *bona fide* private individual

owner shall not own any interest in, nor shall there be owned or reserved on his or her behalf, under any express or voluntary agreement, title to, or any right to all or portion of the proceeds from the sale or rental of, more than three (3) single-family houses contemporaneously.

(b) Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four (4) families living independently of each other, if the owner actually maintains and occupies one (1) of such living quarters as his or her residence.

(2) For the purposes of subsection (1), a person is deemed to be in the business of selling or renting dwellings if the person:

(a) Has, within the preceding twelve (12) months, participated in three (3) or more transactions involving the sale or rental of any dwelling or interest therein;

(b) Has, within the preceding twelve (12) months, participated as agent, other than in the sale of his or her own personal residence, in providing sales or rental facilities or sales or rental services in two (2) or more transactions involving the sale or rental of any dwelling or interest therein; or

(c) If the owner of any dwelling designed or intended for occupancy by, or occupied by, five (5) or more families.

(B) Nothing in this section prohibits a religious organization or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization from limiting the sale, rental, or occupancy of any dwelling which it owns or operates for other than a commercial purpose to individuals of same religion or from giving preference to such individuals. However, that corporation, association, educational institution or society shall not discriminate in relation to fair housing based on other categories protected under this ordinance.

(C) Nothing in this section prohibits a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial activity, from limiting the rental or occupancy of such lodgings to its members or from giving preference to members.

(D) Nothing in this section requires any person renting or selling a dwelling constructed for first occupancy before the date of the enactment of this Ordinance, to modify, alter, or adjust the dwelling in order to provide physical accessibility except as otherwise required by law.

(E) Housing for older persons.

(1) Any provision of this section regarding age or familial status does not apply with respect to housing for older persons.

(2) Nothing in this subsection is intended to limit the applicability of any reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

(3) As used in this subsection, the term "housing for older persons" means housing:

(a) Provided under any state or federal program that is determined by state or federal rule to be specifically designed and operated to assist elderly persons, as defined in the state or federal program;

(b) Intended for, and solely occupied by, persons sixty-two (62) years of age or older;

(c) Intended and operated for occupancy by persons fifty-five (55) years of age or older.

(4) In order for housing to qualify as being intended and operated for occupancy by persons fifty-five (55) years of age or older in accordance with subsection (3)c, such housing must meet the following requirements:

(a) The housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under this subsection. If the housing facility or community meets the requirements of subsections (4)(b) and (5) and the recorded governing documents provide for an adult, senior, or retirement housing facility or community and the governing documents lack an amendatory procedure, prohibit amendments, or restrict amendments until a specified future date, then that housing facility or community shall be deemed housing for older persons intended and operated for occupancy by persons fifty-five (55) years of age or older. If those documents further provide a prohibition against residents sixteen (16) years of age or younger, that provision be construed, for purposes of this section, to only apply to residents eighteen (18) years of age or younger, in order to conform with federal law requirements. Governing documents which can be amended at a future date must be amended and properly recorded within one (1) year after that date to reflect the requirements for consideration as housing for older persons, if that housing facility or community intends to continue as housing for older persons.

(b) The housing facility or community complies with rules made by the Secretary of the United States Department of Housing and Urban Development pursuant to 24 C.F.R. Part 100 (entitled "Discriminatory Conduct under the Fair Housing Act"), or as that part may be thereafter amended, for verification of occupancy, which rules provide for verification by reliable surveys and affidavits and include examples of the types of policies and procedures relevant to a determination of compliance with the requirements of subsection (4)(a). Such surveys and affidavits are admissible in administrative and judicial proceedings for the purposes of such verification.

(5) In order for housing to qualify as being intended and operated for occupancy by persons fifty-five (55) years of age or older in accordance with subsection (3)(c),

at least eighty (80) percent of the occupied units shall be occupied by at least one (1) person fifty-five (55) years of age or older.

(a) For purposes of subsection (5), occupied unit means (i) a dwelling unit that is actually occupied by one (1) or more persons on the date that the exemption is claimed or (ii) a temporarily vacant unit, if the primary occupant has resided in the unit during the past year and intends to return on a periodic basis.

(b) For purposes of subsection (5), occupied by at least one (1) person fifty-five (55) years of age or older means that on the date the exemption for housing designed for persons who are fifty-five (55) years of age or older is claimed (i) at least one (1) occupant of the dwelling unit is fifty-five (55) years of age or older or (ii) if the dwelling unit is temporarily vacant, at least one (1) of the occupants immediately prior to the date on which the unit was temporarily vacated was fifty-five (55) years of age or older.

(c) Housing satisfies the requirements of subsection (5) even though:

1. There are unoccupied units, provided that at least eighty (80) percent of the occupied units are occupied by at least one (1) person fifty-five (55) years of age or older.

2. There are units occupied by employees of the housing facility or community (and family members residing in the same unit) who are under fifty-five (55) years of age, provided the employees perform substantial duties related to the management or maintenance of the facility or community.

3. There are units occupied by persons who are necessary to provide a reasonable accommodation to disabled residents and who are under the age of fifty-five (55).

4. For a period expiring one (1) year from the effective date of 24 C.F.R. Part 100, Subpart E, there are insufficient units occupied by at least one (1) person fifty-five (55) years of age or older, but the housing facility or community, at the time the exemption is asserted (i) has reserved all unoccupied units for occupancy by at least one (1) person fifty-five (55) years of age or older until at least eighty (80) percent of the units are occupied by at least one (1) person who is fifty-five (55) years of age or older; and (ii) meets the requirements of this subsection (5).

(d) For purposes of the transition provision described in subsection (d)(4), a housing facility or community may not evict, refuse to renew leases, or otherwise penalize families with children who reside in the facility or community in order to achieve occupancy of at least eighty (80) percent of the occupied units by at least one (1) person fifty-five (55) years of age or older.

(e) Where application of the eighty (80) percent rule results in a fraction of a unit, that unit shall be considered to be included in the units that must be occupied by at least one (1) person fifty-five (55) years of age or older.

(f) Each housing facility or community may determine the age restriction, if any, for units that are not occupied by at least one (1) person fifty-five (55) years of age or older, so long as the housing facility or community complies with the provisions of subsection (6).

(6) In order for housing to qualify as being intended and operated for occupancy by persons fifty-five (55) years of age or older in accordance with subsection (3)(c), it must publish and adhere to policies and procedures that demonstrate its intent to operate as housing for persons fifty-five (55) years of age or older.

(a) For purposes of subsection (6), the following factors, among others, are considered relevant in determining whether the housing facility or community has complied with this requirement:

1. The manner in which the housing facility or community is described to prospective residents;
2. Any advertising designed to attract prospective residents;
3. Lease provisions;
4. Written rules, regulations, covenants, deed or other restrictions;
5. The maintenance and consistent application of relevant procedures;
6. Actual practices of the housing facility or community; and
7. Public posting in common areas of statements describing the facility or community as for persons fifty-five (55) years of age or older.

(b) Phrases such as "adult living," "adult community," or similar statements in any written advertisement or prospectus are not consistent with the intent that the housing facility or community intends to operate as housing for persons fifty-five (55) years of age or older.

(c) If there is language in deed or other community or facility documents which is inconsistent with the intent to provide housing to persons who are fifty-five (55) years of age or older, consideration shall be given to documented evidence of a good-faith attempt to remove such language in determining whether the housing facility or community complies with the requirements of this section in conjunction with other evidence of intent.

(d) A housing facility or community may allow occupancy by families with children as long as it meets the requirements of subsections (5) and (6)(a).

(7) In order for housing to qualify as being intended and operated for occupancy by persons fifty-five (55) years of age or older in accordance with subsection (3)(c), it must be able to produce, in response to a complaint filed under this section, verification of compliance with subsection (5) through reliable surveys and affidavits.

(a) For purposes of subsection (7), a facility or community shall, within one hundred-eighty (180) days of the effective date of this rule, develop procedures for routinely determining the occupancy of each unit, including the identification of whether at least one (1) occupant of each unit is fifty-five (55) years of age or older. Such procedures may be part of a normal leasing or purchasing arrangement.

(b) The procedures described in subsection (7)(a) must provide for regular updates, through surveys or other means, of the initial information supplied by the occupants of the housing facility or community. Such updates must take place at least once every two (2) years. A survey may include information regarding whether any units are occupied by persons described in subsections (5)(c)(2) and (5)(c)(3).

(c) Any of the following documents are considered reliable documentation of the age of the occupants of the housing facility or community:

1. Driver's license;
2. Birth certificate;
3. Passport;
4. Immigration card;
5. Military identification;
6. Any other state, local, national, or international official documents containing a birth date of comparable reliability; or
7. A certification in a lease, application, affidavit, or other document signed by any member of the household age eighteen (18) or older asserting that at least one (1) person in the unit is fifty-five (55) years of age or older.

(d) A facility or community shall consider any one (1) of the forms of verification identified above as adequate for verification of age, provided that it contains specific information about current age or date of birth.

(e) The housing facility or community must establish and maintain appropriate policies to require that occupants comply with the age verification procedures required by this subsection (7).

(f) If the occupants of a particular dwelling unit refuse to comply with the age verification procedures, the housing facility or community may, if it has sufficient

evidence, consider the unit to be occupied by at least one (1) person fifty-five (55) years of age or older. Such evidence may include:

- household census;
1. Government records or documents, such as a local
 2. Prior forms or applications; or
 3. A statement from an individual who has personal knowledge of the age of the occupants. The individual's statement must set forth the basis for such knowledge and be signed under the penalty of perjury.

(g) Surveys and verification procedures which comply with the requirements of this subsection (7) shall be admissible in administrative and judicial proceedings for the purpose of verifying occupancy.

(h) A summary of occupancy surveys shall be available for inspection upon reasonable notice and request by any person.

(F) Nothing in this section:

(1) Prohibits a person engaged in the business of furnishing appraisals of real property from taking into consideration factors other than age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, or gender identity and expression.

(2) Limits the applicability of any reasonable local restriction regarding the maximum number of occupants permitted to occupy a dwelling.

(3) Requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

(4) Prohibits conduct against an individual because such individual has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined under Chapter 893, Florida Statutes (2015), or as that chapter may thereafter be amended.

SECTION 2. It is the intention of the City Council of the City of Palm Bay that the provisions of this Ordinance shall be included in the City of Palm Bay Code of Ordinances, Title XIII, General Offenses, as a chapter titled "Protection of Human Rights".

SECTION 3. All Ordinances or parts of Ordinances in conflict herewith are hereby repealed and all Ordinances or parts of Ordinances not in conflict herewith are hereby continued in full force and effect.

SECTION 4. If any portion, clause, phrase, sentence or classification of this Ordinance is held or declared to be either unconstitutional, invalid, inapplicable, inoperative, or void, then such declaration shall not be construed to affect other portions of the Ordinance; it is hereby declared to be the express opinion of the City Council of the City of Palm Bay that any such unconstitutional, invalid, inapplicable, inoperative or void portion or portions of this Ordinance did not induce its passage, and that without the inclusion of any such portion or portions of this Ordinance, the City Council would have enacted the valid constitutional portions thereof.

SECTION 5. The provisions within this ordinance shall take effect immediately upon the enactment date.

Read in title only at Meeting No. 2016- , held on , 2016; and read in title only and duly enacted at Meeting No. 2016- , held on , 2016.

William Capote, MAYOR

ATTEST:

Terese M. Jones, CITY CLERK