

ORDINANCE NO. 3328

AN ORDINANCE to add a new subsection (a)(10) to Section 12-4-2 (FINDINGS OF FACT AND DECLARATION OF POLICY); to add a new subsection (z) to Section 12-4-3 (DEFINITIONS); to amend and reordain subsections (a), (b), (c) and (d) of Section 12-4-4 (UNLAWFUL HOUSING PRACTICES); to amend and reordain Section 12-4-5 (UNLAWFUL EMPLOYMENT PRACTICES); to amend and reordain subsections (a) and (b) of Section 12-4-7 (HEALTH AND SOCIAL SERVICE PRACTICES); to amend and reordain subsection (a) of Section 12-4-8 (PUBLIC ACCOMMODATIONS); to amend and reordain Section 12-4-9 (CREDIT); and to amend and reordain Section 12-4-10 (EDUCATION); all of CHAPTER 4 (HUMAN RIGHTS), Title 12 (EDUCATION, SOCIAL SERVICES AND WELFARE) of The Code of the City of Alexandria, Virginia, 1981, as amended.

WHEREAS, it is the desire and intention of the City Council of Alexandria in enacting this ordinance to protect its residents and others from unjust discrimination on the basis of sexual orientation; and

WHEREAS, in enacting this ordinance, City Council recognizes that there may be occasions where the protections afforded by the ordinance may be inconsistent with religious beliefs held sincerely and in good faith by individuals and institutions who are subject to the ordinance; and

WHEREAS, in the event such occasions arise, City Council does not intend the protections provided by this ordinance to override the rights afforded such individuals and institutions by the Free Exercise provisions of the United States and Virginia Constitutions, but intends the ordinance to be applied and enforced in accordance with the principles adopted by the courts in resolving conflicts between governmental mandates and religious practices and beliefs; and

WHEREAS, on all occasions where the protections afforded by this ordinance are not overridden by the Free Exercise provisions of the United States and Virginia Constitutions, City Council desires and intends this ordinance to be vigorously applied and enforced; now, therefore,

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Section 12-4-2 of The Code of the City of Alexandria, Virginia, 1981, as amended, be and the same hereby is amended by designating former subsections (10) and (11) of subsection (a) as (11) and (12), respectively, and by adding a new subsection (10) to subsection (a) to read as follows:

(10) Discrimination because of sexual orientation denies many Alexandria citizens full access to housing, employment opportunities, health and social services, public accommodations, credit and education in the City of Alexandria and is detrimental to the welfare of the city.

(11) It is in the public interest and in furtherance of the welfare and well being of all citizens of Alexandria, Virginia, to assure that each citizen is treated fairly, provided equal protection of the law and afforded full and equal opportunity to enjoy life, liberty, property and the pursuit of happiness.

(12) The conditions set forth in subsections (1) through (10) above have caused or are capable of causing, or encouraging crime, riots, disturbances, disorders, delinquency, breach of peace, fires, poverty, slums, blighted areas, overcrowding, unhealthy and unsanitary conditions, disease, increased mortality, unstable family life, increased cost of government, excessive public assistance problems, unemployment, loss of manpower, loss of womanpower, loss of tax revenue, and loss of trade, commerce, business and productivity.

Section 2. That Section 12-4-3 of The Code of the City of Alexandria, Virginia, 1981, as amended, be and the same hereby is amended by designating former subsection (z) as subsection (aa) and by adding a new subsection (z) to read as follows:

(z) **Sexual orientation.** Having a preference for heterosexuality, homosexuality or bisexuality, having a history of such a preference or being identified with such a preference.

(aa) **To rent.** Includes to lease, to sublease, to let or otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

Section 3. That subsections (a), (b), (c) and (d) of Section 12-4-4 of The Code of the City of Alexandria, Virginia, 1981, as amended, be and the same hereby are amended and reordained to read as follows:

(a) **Unlawful housing practices -- sale or rental.** Except as provided in subsection (e) of this section, it shall be unlawful for any person:

(1) 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, housing to any person, because of race, color, sex, religion, ancestry, national origin, marital status, age, parenthood, sexual orientation or handicap.

(2) To discriminate against any person in the terms, conditions or privileges of sale or rental of housing, or in the provision of services or facilities in connection therewith, because of race, color, sex, religion, ancestry, national origin, marital status, age, parenthood, sexual orientation or handicap.

(3) 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 housing, that indicates any preference, limitation or discrimination based on race, color, sex, religion, ancestry, national origin, marital status, age, parenthood, sexual orientation or handicap, or an intention to make any such preference, limitation or discrimination.

(4) To represent to any person because of race, color, sex, religion, ancestry, national origin, marital status, age, parenthood, sexual orientation or handicap, that any housing is not available for inspection, sale or rental, when the housing is in fact so available.

(5) For profit, to induce or attempt to induce any person to sell or not sell, or to rent or not rent any housing by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, sex, religion, ancestry, national origin, marital status, age, parenthood, sexual orientation or handicap.

(6) Except in connection with a written affirmative action plan, to make an oral inquiry or to use a written inquiry or form of application or photograph, as a condition of the transaction in connection with the sale or rental of housing that elicits or attempts to elicit information concerning race, color, religion, ancestry, national origin or handicap.

**(b) Unlawful housing practices -- financing.**

(1) a. It shall be unlawful for any lending institution to deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing or maintaining housing, or to discriminate against him or her in the fixing of the amount, interest rate, duration or other terms or conditions of the loan or other financial assistance because of the race, color, sex, religion, ancestry, national origin, marital status, age, parenthood, sexual orientation or handicap of such person.

b. It shall also be unlawful for any lending institution to deny a loan or other financial assistance because of the race, color, sex, religion, ancestry, national origin, marital status, age, parenthood, sexual orientation or handicap of the present or prospective owners, lessees, tenants or occupants of the housing in relation to which the loan or other financial assistance is to be made or given.

c. It shall also be unlawful for any lending institution to deny such a loan or other financial assistance to any person because of the race, color, sex, religion, ancestry, national origin, marital status, age, parenthood, sexual orientation or handicap of any person associated with such person in connection with the loan or other financial assistance or the purposes of the loan or other financial assistance.

(2) It shall also be unlawful for any bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part in the making of commercial real estate loans, to discriminate against any person applying for a loan or other financial assistance, the proceeds of which are to be used for the purchase, construction, improvement, repair or maintenance of housing by:

a. denying a loan or other financial assistance because of the race, color, religion, ancestry, national origin, sex, marital status, age, parenthood, sexual orientation or handicap of the residents of the neighborhood in which the housing is located; or

b. discriminating in fixing of the amount, interest rate, duration or other terms or conditions of a loan or other financial assistance, because of the race, color, religion, ancestry, national origin, sex, marital status, age, parenthood, sexual orientation or handicap of the residents of the neighborhood in which the housing is located.

**(c) Unlawful housing practices -- brokerage services.**

(1) It shall be unlawful for any person to deny any person 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 housing, or to discriminate against any person in the terms or conditions of access, membership or participation, on account of race, color, sex, religion, ancestry, national origin, marital status, age, parenthood, sexual orientation or handicap of such persons.

(2) It shall be unlawful for any real estate broker or salesperson or other person in the business of selling or renting housing to solicit the sale or rental of housing or discourage the purchase or rental of housing by representations regarding the existing or potential proximity to real property owned, used or occupied by a person or persons of a particular race, color, sex, ancestry, national origin, marital status, age, parenthood, sexual orientation or handicap.

**(d) Unlawful housing practices -- restrictive covenants, as defined.**

(1) It shall be unlawful for any person who prepares or supervises the preparation of any deed, mortgage, deed of trust, lease or contract affecting title to or any interest in land or housing in the city willfully and knowingly to include therein any restrictive covenant that discriminates on the basis of race, color, religion, national origin, parenthood, sexual orientation or handicap, except that nothing in this subsection shall be

construed to prohibit any person from conveying, or preparing any legal document for any conveyance of housing or land to a religious organization for use only by members of such religious organization.

(2) It shall be unlawful for any person who prepares or supervises the preparation of any deed, mortgage, deed of trust, lease or contract affecting title to or any interest in land or housing in the city, wherein any restrictive covenant prohibited by subsection (1) above is incorporated by reference to another document or instrument, to fail to include therein a statement that such restrictive covenant is invalid and unenforceable.

(3) The Clerk of the Circuit Court for the City of Alexandria, Virginia, is hereby authorized and directed:

a. To post in a conspicuous location in the clerk's office and in the land record room the following notice printed in 14-point type:

"It is a violation of the Human Rights Code of the City of Alexandria, Virginia, for any person to include any provision in a deed, mortgage, deed of trust, lease or contract affecting title or any interest in land which purports to restrict or affect, on the basis of race, color, religion, national origin, parenthood, sexual orientation or handicap the holding, occupancy or transfer of any interest in land, and any such provisions are invalid and unenforceable."

b. When a copy of any deed, mortgage, deed of trust, lease or contract affecting title or interest in land or housing recorded in the clerk's office is requested, to affix to such copy a statement that any provision contained in such legal instrument which purports to restrict or affect the holding, occupancy, ownership, rental, lease or transfer of any interest on the basis of race, color, religion, national origin, parenthood, sexual orientation or handicap is invalid or unenforceable.

Section 4. That Section 12-4-5 of The Code of the City of Alexandria, Virginia, 1981, as amended, be and the same hereby is amended and reordained to read as follows:

Sec. 12-4-5 Unlawful employment practices.

(a) Except as provided in subsection (b) of this section, it shall be unlawful:

(1) for any employer to fail or refuse to hire or to discharge any person or otherwise to discriminate against any person with respect to hiring, tenure, compensation, promotion,

discharge or any other terms, conditions or privileges directly or indirectly related to employment because of race, color, sex, religion, ancestry, national origin, marital status, age, sexual orientation or handicap, when such person is a qualified handicapped person;

(2) for any employer, employment agency or labor organization to establish, announce or follow a policy of denying or limiting, the employment, membership or apprenticeship opportunities of any person on the basis of race, color, sex, religion, ancestry, national origin, marital status, age, sexual orientation or handicap, when such person is a qualified handicapped person;

(3) for any employer, labor organization, employment agency or any joint labor management committee controlling apprentice training programs to deny to or withhold from any person the right to be admitted to or to participate in a guidance program, an apprenticeship training program, an on-the-job training program or any other occupational training program because of race, color, sex, religion, ancestry, national origin, marital status, age, sexual orientation or handicap, when such person is a qualified handicapped person;

(4) for any employer, employment agency or labor organization to publish or circulate, or to cause to be published or circulated with intent to circumvent the spirit and purpose of this section, any notice or advertisement relating to employment or membership which indicates any preference, limitation or discrimination based on race, color, sex, religion, ancestry, national origin, marital status, age, sexual orientation or handicap, when such person is a qualified handicapped person, or an intention to make any such preference, limitation or discrimination;

(5) for any employment agency to fail or refuse to accept, register, classify properly or refer for employment or otherwise to discriminate against any person because of race, color, sex, religion, ancestry, national origin, marital status, age, sexual orientation or handicap, when such person is a qualified handicapped person;

(6) for any labor organization to discriminate against any person in any way which would deprive or limit his or her employment opportunities or otherwise adversely affect his or her status as an applicant for employment or as an employee with respect to hiring, seniority, tenure, referral, compensation, promotion, discharge or any other terms, conditions or privileges directly or indirectly related to employment because of race, color, sex, religion, ancestry, national origin, marital status, age, sexual orientation or handicap, when such person is a qualified handicapped person;

(7) for any employer, employment agency or labor organization to discriminate against any person because he or she has opposed any practice forbidden by this section or because he or she has made a complaint or testified or assisted in any manner in any investigation or proceeding under this chapter relating to the provisions of this section; or

(8) for any employer to deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodations to the physical or mental limitations of the employee or applicant.

(b) Exceptions. Nothing in subsection (a) of this section shall apply to:

(1) any type of employment, occupation, or position where the job involves a bona fide occupational qualification requiring the employment of a person or persons of a particular religion, sex, national origin, ancestry, marital status, age, sexual orientation or physical or mental capabilities, where the qualification is reasonably necessary to the normal operation of that business or enterprise;

(2) any employment practice based upon applicable laws or regulations established by the United States or any agency thereof, the Commonwealth of Virginia, or any political subdivision of the Commonwealth having jurisdiction in the City of Alexandria;

(3) the observance of the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension or insurance plan, which is not a subterfuge to evade the purposes of this section, except that no such employee benefit plan shall excuse the failure to hire any individual, and no such seniority system or employee benefit plan shall require or permit the involuntary retirement of any individual who is at least 40 years of age but less than 70 years of age because of the age of such individual;

(4) any person who is 70 years or older; provided, however, that no form of discrimination based on race, color, sex, religion, national origin, marital status, sexual orientation or handicap that is prohibited by this section may be practiced against any person who is 70 years of age or older;

(5) agreements or contracts concerning contribution rates for employer or employee for group insurance, when the contribution rate may be affected by marital status or number of dependents;

(6) any employment agency providing services only to elderly persons or to minors; provided, however, that no employment agency may discriminate on the basis of race, color, sex, religion, ancestry, national origin, marital status, sexual orientation or handicap; and

(7) notwithstanding any other provisions of this section, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality or production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, sex, religion, ancestry, national origin, marital status, age, sexual orientation or handicap, nor shall it be an unlawful employment practice for any employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, sex, religion, ancestry, national origin, marital status, age, sexual orientation or handicap.

(c) Affirmative action employment program. The city manager shall establish an affirmative action employment program for the city and shall report to the city council regarding the status of same, at least twice a year.

Section 5. That subsections (a) and (b) of Section 12-4-7 of The Code of the City of Alexandria, Virginia, 1981, as amended, be and the same hereby are amended and reordained to read as follows:

Sec. 12-4-7 Health and social service practices.

(a) Private health and social service practices. It shall be unlawful for any private health or social service agency:

(1) to discriminate against any person by refusing, denying or withholding from him or her any of the services, programs, benefits, facilities or privileges of any health and social program or service, or to discriminate in the quality of services offered through such programs because of race, color, sex, religion, ancestry, national origin, marital status, age, sexual orientation or handicap;

(2) to discriminate against any person, in the setting of rates or charges for any of the services, programs, benefits, facilities or privileges of any agency because of race, color, sex, religion, ancestry, national origin, marital status, age, sexual orientation or handicap; or

(3) to discriminate against any person by communicating, publishing, advertising or representing that any of the services, programs, benefits, facilities or privileges of any health or social service agency are withheld from or denied to any person because of race, color, sex, religion, ancestry, national origin, marital status, age, sexual orientation or handicap.

(b) Exceptions. Nothing in subsection (a) of this section shall apply to any health or social service or practice:

(1) that reasonably relates only to a particular sex, religion, national origin, age, sexual orientation or handicap; or

(2) with respect to which sex, religion, national origin, marital status, age, sexual orientation or handicap is usually and normally considered an essential qualification or requirement for such service.

Section 6. That subsection (a) of Section 12-4-8 of The Code of the City of Alexandria, Virginia, 1981, as amended, be and the same hereby is amended and reordained to read as follows:

(a) It shall be unlawful for any public accommodations to discriminate against any person on the basis of race, color, sex, religion, ancestry, national origin, marital status, age, sexual orientation or handicap with respect to the access, use of, benefit of or enjoyment of goods, services, facilities, privileges or any other advantages of any public accommodation, or to make or publish any statement evidencing an intent to do so.

Section 7. That Section 12-4-9 of The Code of the City of Alexandria, Virginia, 1981, as amended, be and the same hereby is amended and reordained to read as follows:

Sec. 12-4-9 Credit.

It shall be unlawful for any lending institution on the basis of race, color, religion, sex, ancestry, national origin, marital status, age, sexual orientation or handicap to:

(a) discriminate against any person in the furnishing of credit against any person in the furnishing of credit or other credit-related services; or

(b) deny or terminate credit or credit related services or to affect adversely a person's credit rating or standing.

Provided that the person is otherwise qualified for the credit or credit-related service; and provided further that nothing in this section shall be construed to bar any lending institution from discriminating against any person in the furnishing of credit or credit-related service or denying or terminating credit or credit-related service to any person whose life expectancy, according to generally accepted mortality tables, is less than the term for which the credit or credit-related service is requested.

Section 8. That Section 12-4-10 of The Code of the City of Alexandria, Virginia, 1981, as amended, be and the same hereby is amended and reordained to read as follows:

Sec. 12-4-10 Education.

(a) Private education. It shall be unlawful for any private educational institution, or its agents, employees or officers, on the basis of race, color, sex, national origin, ancestry, sexual orientation or handicap:

(1) to discriminate against any person with respect to the terms, conditions, accommodations, advantages, facilities, benefits, privileges or services of that institution;

(2) to make or use a written or oral inquiry or form of application for admission to an educational institution that elicits or attempts to elicit information concerning race, color or handicap; except as required to obtain grants or other funds from a public or private institution or agency;

(3) except in connection with a written affirmative action plan, to require, or cause to be required that a photograph of any applicant for admission to an educational institution be submitted with any form of application for admission;

(4) to establish, make or follow a policy of denial or limitation of educational opportunities;

(5) to permit potential employers to recruit students on its premises or to permit the employers to use its placement facilities for referral of students for employment or permit the employers to participate in any job-training or work-study program operated by or in conjunction with the educational institution unless the potential employer has submitted to the educational institution a statement certifying that the employer is an equal opportunity employer;

(6) to deny to any member of its student body educational services or facilities that are generally available to members of the opposite sex;

(7) to fail to provide services to handicapped persons which are provided to nonhandicapped persons;

(8) to fail to provide services to a handicapped person who meets the academic and technical standards requisite to admission or participation in a postsecondary and vocational education program or activity; or

(9) to subject any member of its faculty or staff to a discriminatory practice stated as unlawful under subsections (1) through (8) of this subsection.

(b) Nothing in subsection (a) of this section shall be construed to make unlawful any private educational institution

established exclusively for either all males or females or to interfere with the exercise of genuinely held religious beliefs by educational institutions organized for the primary purpose of preparing men and women for the ordained ministry.

(c) Public education. The commission is hereby authorized to conduct studies, hold hearings and review the policies and practices of any public educational institution with respect to race, color, sex, national origin, ancestry, religion, sexual orientation or handicap. The commission shall report its findings to the appropriate policy-making body and chief administrator of the public educational institution (for instance the school board and superintendent of public schools in the city or to the president of the Northern Virginia Community College and the community college board or to the policy-making body and chief administrator of any other public educational program) and may, at its discretion, enter into negotiations with said policy-making body and chief administrator to rectify any discriminatory policies or practices that may exist.

Section 9. That this ordinance shall become effective upon the date and at the time of its final passage.

JAMES P. MORAN, JR.  
Mayor

Final Passage: October 15, 1988