

ORDINANCE NO. 18-22

AN ORDINANCE AMENDING CHAPTER 9.08 – OFFENSES AGAINST THE PERSON, OF THE CASPER MUNICIPAL CODE TO ADD SECTION 9.08.020 “MALICIOUS HARMS BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, GENDER EXPRESSION, NATIONAL ORIGIN OR DISABILITY.”

WHEREAS, the governing body of the City of Casper has the authority granted by Wyoming State Statute §15-1-103(a)(xviii), xvi(C) and (xli) to adopt ordinances and resolutions necessary to protect the health, safety and welfare of the City and of its citizenry; and,

WHEREAS, the governing body of the City of Casper may perform acts authorized by the powers granted by the state in relation to the concerns of the city; and,

WHEREAS, the City of Casper is composed of and welcomes diverse individuals, groups and communities; and,

WHEREAS, the City of Casper values diversity and seeks to encourage and allow all residents and visitors to contribute to the commercial life and activities of the City and to the cultural and social life of the City; and,

WHEREAS, affirming nondiscrimination protections and investing in social safety will help reduce vulnerable communities’ exposure to potential violence, economic injury and discrimination; and,

WHEREAS, the governing body of the City of Casper desires to amend Chapter 9.08 – of the Casper Municipal Code by creating Section 9.08.020.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CASPER, WYOMING: that Section 9.08.020 is created and shall be codified as follows:

Section 9.08.020 Malicious harms based on race, color, religion, sex, sexual orientation, gender identity, gender expression, national origin or disability.

A. Unlawful physical actions committed on the basis of protected characteristics

It shall be unlawful and an offense for any person to commit any of the following acts maliciously and with the specific intent to intimidate or harm another person because of that person’s race, color, religion, ancestry, sex, sexual orientation, gender identity, gender expression, national origin or disability (hereafter collectively “protected characteristics”):

1. a. **Assault of another.** Whoever, having the present ability to do so, attempts to commit a violent injury on another person because of one or more protected characteristics of that person, is guilty of an assault under this section.

b. **Assault and Battery of that person.** Whoever, in a rude, insolent or angry manner, unlawfully touches another person because of one or more protected characteristics of that person, is guilty of an assault and battery under this section.

2. **Injuring, defacing or destroying property of another.** Whoever shall: (a) willfully injure, deface or destroy, or attempt to injure, deface or destroy, any other person's building or any fixture thereof, (b) injure, destroy or secrete any goods, chattels or valuable papers of any other person, (c) injure, deface, or destroy any fence, foundation, sidewalk, trees or any other private property of any other person without permission, or (d) damage, destroy, vandalize, deface, trespass upon, or steal any real or personal property of any other person, because of one or more protected characteristics of that person, is guilty of injuring, defacing or destroying property of another under this section.

B. Inciting imminent lawless violence against another.

It shall be unlawful and a violation hereof for any person, by words, depictions or actions, to incite or produce imminent lawless violence directed against another person because of one or more protected characteristics of that person, including circumstances in which such words, depictions, or actions were intended and likely to incite or produce such imminent lawless violence, but failed in their objective.

C. Places of public accommodation; discrimination prohibited.

It shall be unlawful and an offense for any person, with malice or prejudice, to restrict another person from obtaining the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any place of public accommodation because of one or more protected characteristics of that person. For purposes of this paragraph, "place of public accommodation" means, businesses, and locations which are open to the public., or which invite the patronage of the public.

D. Housing; illegal discrimination prohibited.

It shall be unlawful for any person or entity to discriminate against another person in the sale, lease, or rental of any housing facility, or to otherwise discriminate against such person in the terms, conditions, maintenance, improvement, or repair of any housing facility, because of one or more protected characteristics of that person.

E. Employment discrimination prohibited.

1. It shall be unlawful and an offense for any employer to refuse to hire or promote a person, or to discriminate against a person in matters of compensation or the terms, conditions or privileges of employment, because of one or more protected characteristics of that person.
2. It shall be unlawful and an offense for any person, an employer, an employment agency, a labor organization, or its employees or members, to discriminate in matters of employment or membership, including customary benefits of the employment membership, against a qualified person, because of one or more protected characteristics of that person.
3. It shall be unlawful and an offense for an employer to reduce the wage or benefits of any employee because of one or more protected characteristics of that person.

F. Exceptions and Definitions.

1. Notwithstanding anything contained in this Section, the following practices shall not be a violation of this Section:
 - a. Any action or right authorized or protected by the Religious Freedom Restoration Act (42 U.S.C. § 2000bb – 2000bb-4), Wyoming Statutes, the United States Code, the United States Constitution, or the Wyoming Constitution.
 - b. For a religious organization or institution to restrict any of its facilities of housing or accommodations which are operated as a direct part of religious activities to individuals of the religious organization or institution involved or to restrict employment opportunities for officers, religious instructors and clergy to individuals of that religious organization or institution.
 - c. For the owner of an owner-occupied one-family or two-family dwelling, or a housing facility or public accommodation facility, respectively, devoted entirely to the housing and accommodation of individuals of one sex, to restrict occupancy and use on the basis of sex.
 - d. To discriminate in any arrangement for the sharing of a dwelling unit by an individual who is sharing the unit.
2. Notwithstanding anything contained in this Section, the following entities or their agencies shall not be prosecuted pursuant to Subsections C., D., and E., of this Section:
 - a. The United States or any department or agency thereof, a corporation wholly owned by the government of the United States or Indian Tribe;
 - b. The State of Wyoming or any department or agency thereof, including any political subdivision of the State;
 - c. A bona fide private membership club (other than a labor organization) which is exempt from taxation under the Internal Revenue Code of 1986; or,

- d. A fraternal or religious association or corporation if the association or corporation is neither organized for private profit nor has as its primary purpose the provision of accommodations or services that are available on a non-membership basis.
- e. An institution, club, or place of accommodation that proves that it is, by its nature, distinctly private. An institution, club, or place of accommodation is not by its nature distinctly private if:
 - i. It has more than twenty-five) members, and
 - ii. Provides regular meal service, and
 - iii. Regularly receives payment for dues, fees, use of space, facilities, services, meals, or beverages, directly or indirectly, from or on behalf of members. For the purposes of this definition, any lodge of a recognized national fraternal organization is considered by its nature distinctly private.

3. Definitions:

- a. “Malice” as used in this ordinance means wrongful intention;
 - b. “Prejudice” as used in this ordinance means a preconceived opinion or belief;
 - c. “Discriminate against” as used in this ordinance means, to treat a natural person or a group of people in a worse way because of one or more characteristics as reference herein; mere speech, unless used and intended to incite, successfully, a battery committed by another, or property damage, or to cause, successfully, a reasonable imminent fear of bodily harm, does not fall within this definition.
 - d. “Dwelling unit” as used in this ordinance means: A room in which people sleep, no matter the number of dwelling units in the building or the number of beds/sleeping accommodations in an individual room.
 - e. “Gender identity” as used in this ordinance means, a person’s internal sense of gender; in essence, how individuals perceive themselves, and communicated usually, by what they call themselves.
 - f. “Gender expression” as used in this ordinance means, the non-verbal way a person communicates gender identity to others, through behavior, clothing, hairstyles, voice or body characteristics.
- G. Burden of proof. Investigations of alleged violations of this code are undertaken based upon a strong showing of reasonable suspicion that the violation occurred because the alleged perpetrator’s actions were based on one or more protected characteristics of the victim(s). Reasonable suspicion is best demonstrated by expressions of bias, hate or prejudice, made or encouraged by the perpetrator at or near the time of the alleged violation, or, through a sustained pattern of conduct which demonstrates the perpetrator’s motivation. Violations of this code section, must be proved beyond a reasonable doubt.

H. Penalty.

1. Any person found guilty of violating subsections A. and/or B., of this section, may be punished by a fine up to \$750.00 or up to six (6) months in jail, or both.
2. Any person found guilty of violating the subsections C., D., or E., of this section, may be punished by a fine up to \$750.00, under the general provisions of Section 1.28.010 of the Casper City Code.

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PASSED on 1st reading the 1st day of November, 2022.

PASSED on 2nd reading the 15th day of November, 2022.

PASSED, APPROVED, AND ADOPTED on third and final reading the 6th day of December, 2022.

APPROVED AS TO FORM:

[Signature]
ATTEST:

[Signature]
Fleur Tremel
City Clerk

CITY OF CASPER, WYOMING
A Municipal Corporation

[Signature]
Ray Pacheco
Mayor

