

SENT VIA EMAIL

February 1, 2018

Supervisor Dion'trae Hayes
Lansing Charter Township
3209 West Michigan Avenue
Lansing, MI 48917

Re: *Opposition to Ordinance No. 76 As Adopted*

Supervisor Hayes:

We are writing on behalf of Equality Michigan, the Lansing Association for Human Rights, and the ACLU of Michigan to express our opposition to Ordinance No. 76, which was approved by the Lansing Charter Township ("Township") Board on January 23, 2018.

While we sincerely appreciate the Township's interest in joining the forty-three other Michigan cities, villages, and townships that have acted to prohibit discrimination based on gender identity and sexual orientation in employment, housing, and public accommodations, we cannot support an ordinance, well-intentioned as it may be, which contains exceptions broad enough to vitiate any purported nondiscrimination protection for lesbian, gay, bisexual, and transgender ("LGBT") individuals. In fact, the language contained within Ordinance No. 76 has the effect of affirmatively licensing anti-LGBT discrimination in the Township. It is our sincere hope that the Township Board will take immediate action to address these concerns, which we have outlined in detail below.

Religious Exemption: Ordinance No. 76 states that the Township's intent is, among other things, to "preserve the rights granted to religious organizations by Michigan and Federal law." Unfortunately, as drafted, the ordinance goes far beyond simply preserving the existing rights of religious organizations or institutions, as defined in Section 18-2. Our organizations recommend that local units of government refrain from writing explicit religious exemptions into nondiscrimination ordinances and instead rely on construction language affirming that the ordinance will be construed and applied consistent with the First Amendment. Many of the forty-three Michigan communities successfully implementing comprehensive nondiscrimination ordinances today follow this approach.

Should a local unit of government nevertheless wish to include an explicit religious exemption in the text of a nondiscrimination ordinance, it should be limited to those activities that are directly related to the religious activities of the religious organization or institution. Under no circumstances should religious organizations or institutions be permitted to engage in discriminatory practices in the administration of programs or services funded by taxpayer dollars.

Section 18-7(1) of Ordinance No. 76 exempts religious organizations and institutions, as broadly defined in Section 18-2, from effectively all of the Ordinance's generally-applicable nondiscrimination mandates, not otherwise required by state or federal law. Section 18-7(1) should be stricken or amended to adopt language similar to successful ordinances from other Michigan communities. We would also recommend that the following language be stricken from the definition of "place of public accommodation," as it also provides an exemption far broader than anything required by state or federal law: "Place of public accommodation does not include a facility operated by a religious organization or institution regardless of whether it is open or accessible to the public."

Treatment of Sex-Segregated Facilities: In several places, Ordinance No. 76 exempts sex-segregated facilities from the generally-applicable nondiscrimination mandates of the Ordinance. Section 18-7(2) allows housing facilities and public accommodations "devoted entirely to the housing and accommodation of individuals of one sex to restrict occupancy and use on the basis of sex." Section 18-7(12) allows access to lavatories and locker room facilities to be restricted "on the basis of sex." Section 18-7(14) allows access to instructional programs, athletic events, and athletic teams to be restricted "on the basis of sex." Interpreted properly, there is nothing objectionable per se about these exemptions. However, since the term "sex" is not defined in the Ordinance and it does not provide any other guidance as to the proper construction and application of these exemptions, we wish to make clear that the Township must not enforce them in a manner that authorizes discrimination based on gender identity.

Individuals must be allowed to access sex-segregated facilities and programs consistent with their gender identity, not their sex assigned at birth. A contrary application would be inconsistent with well-established and controlling legal precedent under both Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a)(1), and Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq*, as interpreted by the U.S. Court of Appeals for the Sixth Circuit. While these federal statutes do not apply to all employers or educational institutions within the Township, it serves no one's interests for the Township to create confusion for those subject to these legal obligations.

Discrimination "Permitted or Required" Exemption: The scope of Section 18-7(5) makes it perhaps the most deeply problematic exemption contained with Ordinance No. 76. This section states that any discrimination "permitted or required by Michigan, Federal, or local law under principles of preemption" is not a violation of the Ordinance. While the language is drafted ambiguously, any reading of this section would authorize most, some might argue all, forms of anti-LGBT discrimination in employment, housing, and public accommodations. As written, this exemption completely swallows any nondiscrimination protection provided by Ordinance No. 76 and renders it little more than a restatement of existing Michigan and federal law. This section should be stricken or, in the alternate, amended to

clarify that only discrimination practices required by Michigan or federal law are exempted from the ordinance.

Once again, we commend the Township's interest in adopting a local nondiscrimination ordinance and your desire to provide meaningful remedies to those who face discrimination in your community. Our organizations have had extensive experience with the development and implementation of comprehensive, local nondiscrimination ordinances across Michigan and we are ready and eager to work with you to address the aforementioned concerns and ensure that Lansing Charter Township has the best possible ordinance for its residents.

Sincerely,



Nathan Triplett
Director of Public Policy
Equality Michigan



Emily Divendorf
President
Lansing Association for Human Rights

Jay Kaplan
LGBT Project Staff Attorney
ACLU of Michigan