



Office of Governor
JB Pritzker

December 22, 2022

Re: Non-Discrimination in Public Spaces

Dear Illinois local public officials:

Given recent incidents of anti-LGBTQ+ violence and harassment in Illinois public spaces, and threats directed at local public officials who oversee these places, we write to remind you that Illinois law requires and empowers you to enforce policies of non-discrimination in public spaces while maintaining public safety. We encourage you to diligently avoid any discriminatory infringement of these rights based on protected characteristics such as sexual orientation and gender identity.

We know that some local public officials have faced threats and targeted harassment concerning public events geared toward LGBTQ+ audiences and have been pressured or tempted to restrict or deny LGBTQ+ events due to fears of controversy, civil disturbance, or public safety concerns. In addressing these fears and concerns, it is equally important to ensure that groups targeted for threats or harassment are not penalized or excluded from public spaces when others may threaten their safety or the safety of the public. Our public spaces are cherished places where Illinoisans from all walks of life gather in community to enjoy civic life and expression, and we must keep them safe, open, and accessible to all.

Local public officials can provide for both safety and non-discrimination in the public spaces they oversee by working closely with local law enforcement to monitor and address safety concerns as they arise. Public spaces include, but are not limited to facilities operated by counties, municipalities, townships, park districts, forest preserve districts, libraries, educational institutions, schools, and our public streets – places where community members often come together to express themselves in parades, demonstrations, and other events.

As local public officials charged with keeping public spaces both safe and equally accessible, you are encouraged to be mindful of the following statutory and constitutional obligations:

- **Illinois Human Rights Act (IHRA) protections:** Under the IHRA, public accommodations and public officials must not engage in discrimination or harassment based on sexual orientation or gender identity.¹ Discrimination includes denying equal access to facilities, goods, or services based on a person's sexual orientation or gender identity. This law applies to libraries, public schools, municipalities, park districts, and forest preserves, among other places of public accommodation.² IHRA protections may also be applicable to the imposition of unequal fees for access to public accommodations and harassment in connection with public accommodations. For more information, see Appendix A: Non-Discrimination in Public Spaces and Reporting of Discrimination: Resource for Local Public Officials.

¹ 775 ILCS 5/1-102 and 5-102.

² See 775 ILCS 5/5-101 for the full definition of public accommodations and public officials covered by the IHRA.

- **Constitutional protections:** Public officials may not constitutionally shut down certain types of protected speech or speakers just because they are controversial, or because of fears that others may respond violently to those messages.³ Denial of event permits, content-based restrictions on access, or other potential responses might infringe the constitutional rights of those who seek to use public spaces. For more information, see Appendix A.
- **Reporting Discrimination in Public Spaces.** If you encounter hate or bias crimes and incidents or civil rights violations in connection with public accommodations, you may report them to the Civil Rights Bureau of the Office of the Illinois Attorney General (OAG). You may also report discrimination in connection with public accommodations to the Illinois Department of Human Rights (IDHR). Local public officials in need of technical assistance in connection with public accommodations may contact the OAG or the IDHR for assistance. For more information, see Appendix A.

Local public officials should exercise caution before taking restrictive measures based on the actual, perceived, or potential outcome of an individual's use of public spaces relating to protected characteristics like sexual orientation or gender identity, as conduct that interferes with an individual's access to and full and equal enjoyment of those spaces may give rise to legal action.⁴ Public officials are also prohibited from retaliating against a person for complaining about discrimination, or aiding, abetting, compelling, or coercing a person to commit a violation of the Illinois Human Rights Act – and such conduct may give rise to legal action, including court orders providing relief.⁵

The landscape may be shifting nationwide as LGBTQ+ individuals experience a rising tide of harassment, infringement of their rights to the free and equal enjoyment of public spaces, and in some instances hate or bias crimes and incidents. In Illinois, however, the commitment to and law governing non-discrimination in public spaces is settled: safety in and equal access to Illinois public spaces is not a luxury, it is a right. Moreover, Illinois law requires local units of government and public officials to respect and refrain from interfering with individuals' fundamental rights to the full and equal enjoyment of Illinois public spaces, including preventing discrimination against LGBTQ+ persons in the exercise of those rights. We appreciate your commitment to upholding the laws of our state, including enforcing non-discrimination in public spaces. Our respective offices remain available to you as vital resources in our shared effort to maintain safety and equal access throughout Illinois' public spaces.

Respectfully,

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³ See, e.g., *Terminiello v. City of Chicago*, 337 U.S. 1, 4–5, (1949); *Cox v. Louisiana*, 379 U.S. 536, 551–52 (1965).

⁴ 775 ILCS 5/5-101 *et seq.*

⁵ 775 ILCS 5/6-101.



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APPENDIX A:

NON-DISCRIMINATION IN PUBLIC SPACES AND REPORTING OF DISCRIMINATION: RESOURCES FOR LOCAL PUBLIC OFFICIALS

Public officials have an obligation to protect the rights of all Illinoisans to safely access public spaces, regardless of protected characteristics like sexual orientation or gender identity. The Office of the Illinois Attorney General (OAG) and the Illinois Department of Human Rights (IDHR) are committed to supporting local public officials in the exercise of their responsibilities concerning non-discrimination in public accommodations and spaces and respectfully provide this resource to assist local public officials in ensuring Illinois public spaces remain open to all and free from unlawful discrimination.

In striving to keep public spaces both safe and equally accessible, local government officials are encouraged to refer to the following statutory and constitutional obligations:

- **Illinois Human Rights Act protections:** Under the Illinois Human Rights Act (IHRA), public accommodations and public officials must not engage in discrimination based on sexual orientation or gender identity.¹ Discrimination includes denying equal access to facilities, goods, or services based on a person’s sexual orientation or gender identity. This law applies to libraries, public schools, municipalities, park districts, and forest preserves, among other places.²
 - **Unequal fees for access:** Imposing an additional fee on an event, solely because of the gender identity or sexual orientation of its organizers or intended audience, may violate the IHRA. Public officials and public accommodations may not impose fees that deny equal access to their facilities, goods, or services, if the fees are based on protected characteristics like sexual orientation or gender identity. For example, if a town charges an additional fee for park permits because of the sexual orientation or gender identity of the event’s organizers, this denial of equal access to public space could subject the town to liability under the IHRA.³

¹ 775 ILCS 5/1-102 and 5-102.

² See 775 ILCS 5/5-101 for the full definition of public accommodations and public officials covered by the IHRA.

³ See, e.g., *Ruby Turner v. Village of Colp*, ALS No. S-10982, 2000 WL 33301959, at *7 (Ill. Hum. Rts. Comm’n August 21, 2000) (explaining that the IHRA would prohibit a municipal policy that discriminates in denying access to publicly operated spaces like parks and golf courses); *James Garner v. State of Illinois*, 1995 WL 704692, at *1 (Ill. Hum. Rts. Comm’n March 7, 1995) (noting that the IHRA would prohibit an official from unlawfully discriminating “with respect to individuals seeking admission to a state park”).

- **Harassment:** Harassment based on gender identity or sexual orientation also may violate the IHRA if its effect is to deny a person equal access to the facilities, goods, or services of the public official or public accommodation.⁴ This may include harassment by other patrons or members of the public, if the public official or public accommodation fails to take corrective action when the harassment is reported or observed.⁵
- **Constitutional protections:** Public officials may not constitutionally shut down certain types of protected speech or speakers just because they are controversial, or because of fears that others may respond violently to those messages.⁶
 - **Event permits:** Streets and parks are public forums. Public officials may not deny permits or otherwise deny event organizers access to these public spaces just because their messages may be controversial or because of fears that others may respond violently to the messages.⁷ Nor may they charge additional fees for police that are based on the anticipated need to restrain those in opposition to the event.⁸ We encourage public officials to work with event organizers and law enforcement to develop safety plans that provide for public safety of events while not penalizing groups for the threats of others, and to report threats of violence and harassment based on protected characteristics to law enforcement and the OAG.
 - **Responding to threats:** Though the First Amendment protects speech, public officials are not prohibited from taking action against a speaker who threatens physical violence in a public forum.⁹ As discussed above, in some circumstances the IHRA may even obligate public officials to respond if a speaker harasses or threatens other members of the public based on their sexual orientation, gender identity, or other protected characteristics.

⁴ See, e.g., *In the Matter of the Request For Review By: Daniel Igwe, Petitioner*, ALS No. 16-0010, 2019 WL 1527836, at *2 (Ill. Hum. Rts. Comm'n March 27, 2019) (harassment in public accommodations is actionable as a form of discrimination under the IHRA when "severe or pervasive enough to alter the conditions of the public accommodation and create an abusive environment").

⁵ See, e.g., *Kenedra Spence v. Cerro Gordo Junior High School*, ALS No. 4653(S), 1997 WL 618143, at *3 (Ill. Hum. Rts. Comm'n Proposal for Decision August 1, 1997) (stricken based on complainant's failure to prosecute) (officials' failure to respond to reported incidents of discriminatory harassment on public school bus constituted public accommodations discrimination under IHRA).

⁶ See, e.g., *Terminiello v. City of Chicago*, 337 U.S. 1, 4-5, (1949); *Cox v. Louisiana*, 379 U.S. 536, 551-52 (1965).

⁷ *Id.*

⁸ See *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 134-36 (1992); *Church of Am. Knights of Ku Klux Klan v. City of Gary, Indiana*, 334 F.3d 676, 681 (7th Cir. 2003).

⁹ See, e.g., *Virginia v. Black*, 538 U.S. 343, 362-63 (2003) (threats of violence are not protected speech).

Technical Assistance for Local Public Officials:

Local public officials in need of technical assistance concerning non-discrimination in public accommodations may contact:

- The Attorney of the Day Line of Illinois Department of Human Rights (IDHR) by calling (312) 814-6242, by email to IDHR.Webmail@illinois.gov; or by visiting IDHR online at dhr.illinois.gov; or
- The Civil Rights Bureau of the Office of the Attorney General (OAG) by calling (877) 581-3692, by email to civilrights@ilag.gov; or by visiting OAG online at illinoisattorneygeneral.gov.

The OAG also hosts free trainings on preventing targeted violence with presentations from the U.S. Secret Service National Threat Assessment Center. For more information on these trainings, local public officials may email special.events@ilag.gov.

Reporting Discrimination in Public Accommodations:

Individuals who experience discrimination in public accommodations or by public officials, or other violations of the Illinois Human Rights Act (IHRA), are encouraged to file claims with the IDHR. The OAG can also investigate patterns and practices of discrimination under the IHRA and take enforcement action.

- **Filing a Charge with IDHR:** A person who believes they have been discriminated against in connection with a public accommodation may file a charge of discrimination with the Illinois Department of Human Rights by submitting a completed [Complainant Information Sheet Form \(Form CIS\)](#):
 - By *calling* the IDHR at (312) 814-4320;
 - By *emailing* a Form CIS to IDHR.Intake@illinois.gov;
 - By *faxing* a Form CIS to (312) 814-6251;
 - By *mailing* a Form CIS to the IDHR's Chicago or Springfield addresses at 555 W. Monroe St. Chicago, IL 60661 or 524 S. 2nd Street, Suite 300, Springfield, IL 62701; or
 - *In person* at the IDHR's Chicago or Springfield offices located at 555 W. Monroe St. Chicago, IL 60661, or 524 S. 2nd Street, Suite 300, Springfield, IL 62701.
- **Filing a Complaint with OAG:** A person who has a complaint of possible patterns or practices of discrimination regarding a public accommodation may file a complaint with the Office of the Attorney General by submitting a [Civil Rights Complaint Form](#):
 - By *calling* the Civil Rights Bureau at (877) 581-3692;
 - By *emailing* a Civil Rights Complaint Form to civilrights@ilag.gov;
 - By *faxing* a Civil Rights Complaint Form to (312) 814-3212; or
 - By *mailing* or *delivering in-person* a Civil Rights Complaint Form to the OAG's Chicago office: 100 W. Randolph Street, 11th Floor, Chicago, IL 60601.