

DRAFT JUNE 7, 2021

**ORDINANCE AMENDING CHAPTER 38 OF THE CODE OF THE CITY OF  
WINSTON-SALEM ENTITLED “MISCELLANEOUS OFFENSES AND PROVISIONS”  
TO CREATE NONDISCRIMINATION IN PUBLIC ACCOMMODATIONS AND  
NONDISCRIMINATION IN EMPLOYMENT ORDINANCES**

**BE IT ORDAINED** by the Mayor and Winston-Salem City Council that the Code of the City of Winston-Salem is hereby amended as follows:

**Section 1.** Section 38-1 Penalty. Is hereby revised to read as follows:

~~“Except for article v,~~ Except for Articles IV, V and VI, the following shall be deemed to be expressly incorporated and be referenced within each section of this chapter: A violation of this section or any part thereof, shall constitute a Class 3 misdemeanor and shall subject the offender to a fine of not more than \$500.00.”

**Section 2.** Chapter 38, Article V. entitled “Police Alarms Systems and Police False Alarms” is hereby change to “Article VII- Police Alarms Systems and Police False Alarms” and a new Article V. “Nondiscrimination in Public Accommodations Ordinance “is hereby created to read as follows:

**“ARTICLE V. NONDISCRIMINATION IN PUBLIC ACCOMMODATIONS  
ORDINANCE.**

**Sec. 38-119 Title.**

The rules and regulations prescribed by this article shall be known and may be cited as the Nondiscrimination in Public Accommodations Ordinance.

**Sec. 38-119.1 Declaration of policy and purpose.**

It is hereby declared to be the policy of the City in the exercise of its licensing and police powers, and under the authority of state law for the preservation of the peace and protection of the health, safety, and welfare of persons in the city, to prohibit discriminatory practices in places of public accommodations, as defined in this article. Consistent therewith, the purpose of this article is to secure for all individuals freedom from discrimination in public accommodations because of or based upon race, color, religion, national origin, ethnicity, color, creed, sex, sexual orientation, gender identity or gender expression, protected hairstyles, pregnancy, disability, age, veteran status, marital status, familial status or political affiliation. Hence the provisions herein shall be construed to achieve the above-mentioned purpose and to promote just and fair access to public accommodations.

**Sec. 38-119.2 Definitions.**

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

Aggrieved person means any person who:

- (1) claims to be injured by a discriminatory practice of a place of public accommodation or
- (2) believes that he or she will be injured by such discriminatory practice that is about to occur.

Commission means the City of Winston-Salem Human Relations Commission, as established by the City Council of the City of Winston-Salem in 1978.

Complainant means the person or group of persons who files a complaint with the commission in accordance with the provisions of this article.

Complaint means a written complaint which has been filed with the commission in accordance with the provisions of this article alleging one or more discriminating practices.

Conciliation means the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the respondent, and the commission.

Conciliation agreement means a written agreement setting forth the resolution of the issues in conciliation.

Director means the Director of the department where the Human Relations Department is located, or designee of the Director, or the City Manager.

Disability with respect to a person means

- (1) Having a physical or mental impairment which substantially limits one or more of a person's major life activities; or
- (2) Having a record of such impairment; or
- (3) Being regarded as having such an impairment.

Discriminatory practice or discrimination means an act that is prohibited under this article or otherwise has the effect of subjecting a person to differential treatment as a result of that person's actual or perceived race, color, religion, national origin, ethnicity, color, creed, sex, sexual orientation, gender identity or gender expression, protected hairstyles, pregnancy, disability, age, veteran status, marital status, familial status, or political affiliation.

Familial status means one or more individuals (who has not attained the age of 18 years) being domiciled with:

(1) A parent or another person having legal custody of such individual; or

(2) The designee of such parent or other person having such custody, with the written permission of such parent or other person.

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 18 years.

Family includes a single individual.

Financial institution means any banking corporation or trust company, savings and loan association, credit union, insurance company, or related corporation, partnership, foundation, or other institution engaged primarily in lending or investing funds.

Gender expression means external appearance of one's gender identity, usually expressed through behavior, clothing, body characteristics or voice, and which may or may not conform to socially defined behaviors and characteristics, typically associated with being either masculine or feminine.

Gender identity means one's innermost concept of self as male, female a blend of both or neither, including how individuals perceive or references themselves. The term refers to how individuals see themselves and what they call themselves. One's gender identity can be the same or different from their sex assigned at birth.

Hearing board shall mean the hearing board of the Winston-Salem Human Relations Commission as defined in Article IV of Chapter 38 of the code of the City of Winston-Salem.

Human Relations Department means the Human Relations Department of the City of Winston-Salem.

Human Relations Director means the Human Relations Director of the Human Relations Department of the City of Winston-Salem or a designee of said director.

National origin means an individual's actual or perceived characteristics related to the individual's place of birth, the individual's ancestor's place of birth, language, culture, accent, ethnicity, or appearance of ethnicity. The term national origin shall be interpreted to include discrimination on the basis of hair texture and hairstyles that are commonly associated with one's national origin.

Parties shall mean the complaint and respondent as defined by this article.

Person includes one or more individuals, partnerships, associations, corporations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receipts, or any other legal or commercial entity.

Place of public accommodation or public accommodation means any place, facility store, other establishment, hotel, motel, business, accommodation, refreshment, entertainment, recreation, or transportation facility of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages or accommodations are extended, offered, sold or otherwise made available to the public. The terms do not include any private club, bona fide membership organization or other establishment not open to the public.

Protected hairstyle means any hairstyle, hair type, or hair texture historically associated with race such as, but not limited to, braids, locks, twists, tight coils or curls, cornrows, Bantu knots, and afros.

Race the term race shall be interpreted to include discrimination of the basis of hair texture and hairstyles that are commonly associated with one's race.

Respondent means the person against whom a complaint is filed under this article.

Religion means all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he/she/they 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.

Sex consistent with the decision of *United States Supreme Court in Bostock v. Clayton County, 140 S. Ct. 1731 (2020)*, the term "sex" or the phrase on the "basis of sex" or "because of sex" shall expressly include sexual orientation, gender identity, gender expression and any other protected category held to be covered by said term and phrases in the aforementioned case.

Sexual orientation means a person's actual or perceived emotional, romantic, or sexual attraction to other people, which includes, but is not limited to, homosexuality, heterosexuality, or bisexuality.

### **Sec. 38-119.3 Prohibited acts.**

- (a) It shall be prohibited and a violation of this article for any place of public accommodation to deny any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation because of or based upon race, color, religion, national origin, ethnicity, color, creed, sex, sexual orientation, gender identity or gender expression, protected hairstyles, pregnancy, disability, age, veteran status, marital status, familial status or political affiliation.
- (b) It shall be prohibited and a violation of this article for any place of public accommodation to make, print, circulate, post, mail or otherwise cause to be published a statement, advertisement, or sign which indicates that the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation will be refused, withheld from, or denied any person because of or based upon race, color, religion, national origin, ethnicity, color, creed, sex, sexual orientation, gender identity or

gender expression, protected hairstyles, pregnancy, disability, age, veteran status, marital status, familial status or political affiliation, or that any person's patronage of or presence at a place of public accommodation is objectionable, unwelcome, unacceptable, or undesirable because of or based upon race, color, religion, national origin, ethnicity, color, creed, sex, sexual orientation, gender identity or gender expression, protected hairstyles, pregnancy, disability, age, veteran status, marital status, familial status or political affiliation; provided, however, this section does not apply to a private club or other establishment not, in fact, open to the public.

#### **Sec. 38-119.4. Applicability and exemptions.**

- (a) This article does not apply to or address access to multiple occupancy restrooms, showers or changing facilities.
- (b) This article shall not apply to a private club or other establishment not in fact open to the public.
- (c) The exemptions and defenses set forth in Sec. 38-120.7 shall apply to this article.

#### **Sec. 38-119.5 Filing a complaint.**

Any person claiming to be aggrieved by a discriminatory practice in violation of any provisions of this article may file a written complaint with Human Relations Department within sixty (60) days after the alleged violation occurred, setting forth the facts upon which the complaint is based, and setting forth facts sufficient to enable the Human Relations Department to identify the person against whom the complaint is filed (hereinafter called the respondent). Notice of the complaint (including the date, place and circumstances of the alleged prohibited discriminatory practice) shall be served by the Human Relations Director upon the respondent by certified mail within ten (10) days after filing. The Human Relations Director shall commence an investigation by initiating a review of the allegations set forth in the complaint.

#### **Sec. 38-119.6. Initial investigation and review; conciliation.**

Not later than sixty (60) days after the complaint is filed, unless for good reason the time is extended for an additional sixty (60) days by the Human Relations Department Director, said Director shall determine whether there is reasonable cause to believe that the respondent has violated any provisions of this article. The Human Relations Department Director shall notify the parties of said determination in writing. If reasonable cause is found, staff of the Human Relations Department shall endeavor within thirty (30) days, unless there are extenuating circumstances, by conference and conciliation with the parties to reach a voluntary and amicable solution to the alleged discriminatory practice. If the Human Relations Director is unable to obtain a voluntary conciliation agreement and resolve the complaint, the complainant and respondent shall be so notified in writing within ten (10) days from such outcome.

#### **Sec. 38-119.7. No cause finding by Human Relations Director; appeal to hearing board.**

- (a) If it is decided by the Human Relations Department Director that there is no reasonable cause to believe that the respondent has engaged in a discriminatory practice in violation of this article, the Human Relations Director shall notify the complainant and the respondent in writing of said determination within ten (10) days after such determination has been made.
- (b) The complainant, within ten (10) days after receiving a copy of a no cause finding, may file a written appeal with the Human Relations Director. Upon receiving such appeal, the Human Relations Director shall refer the matter to the hearing board. The hearing board shall complete its review and determination within thirty (30) days after the appeal is filed, unless there are extenuating circumstances necessitating a delay as determined by the hearing board. If the hearing board determines that there is no reasonable cause to believe that the respondent has engaged in a discriminatory practice, the hearing board shall notify the complainant and the respondent in writing of its determination within ten (10) days after such determination has been made. However, if the hearing board finds that there is reasonable cause to believe that the respondent has violated any provisions of this article, the hearing board shall endeavor, through staff of the Human Relations Department within thirty (30) days, unless there are extenuating circumstances as determined by the hearing board, by conference and conciliation with the parties to reach a voluntary and amicable solution to the alleged discriminatory practice. If the hearing board determines that it is unable to obtain a voluntary conciliation and resolve the complaint, the complainant and respondent shall be so notified in writing within ten (10) days from such determination.

#### **Sec. 38-119.8. Hearing election.**

- (a) Unless the Human Relations Director or the hearing board has decided that there is no reasonable cause to believe that a discriminatory practice has occurred, or unless a conciliation agreement has been negotiated, a hearing board shall hold a hearing, if the parties agree to such, after proper notice. The complainant and respondent must agree to participate in said hearing.
- (b) If the hearing board determines as a result of the hearing that there is no reasonable cause to believe that the respondent has engaged in a discriminatory practice in violation of this article, the hearing board shall state its findings of fact and conclusions of law and shall issue an order dismissing the complaint, and furnish a copy of the order to the complainant, the respondent, the city attorney and such other persons as the hearing deems proper.
- (c) If the hearing board determines, by reasonable cause pursuant, that the respondent has engaged in a discriminatory practice in violation of this article, the hearing board shall state its findings of fact and conclusions of law. If a conciliation agreement has not been negotiated, the hearing board may refer the matter to the city attorney pursuant to Sec. 38-119.15. A copy of the findings of facts, conclusions of law, and recommendations and any negotiated conciliation agreement shall be delivered to the complainant, the respondent, the city attorney and such other persons as the hearing board deems proper.

**Sec. 38-119.9. Failure to cooperate; power of investigation; subpoena power.**

- (a) In the event the respondent or complainant fails to cooperate with the investigation by the Human Relations Department, the City Council shall have power to investigate the affairs of the City, and for that purpose may subpoena witnesses, administer oaths, and compel the production of evidence with respect to any complaint filed under this article.
- (b) If a person fails or refuses to obey a subpoena issued pursuant to this section, City Council may apply to the General Court of Justice for an order requiring that its order be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties. No testimony of any witness before City Council pursuant to a subpoena issued in exercise of the power conferred by this section may be used against him on the trial of any civil or criminal action other than a prosecution for false swearing committed on the examination. If any person, while under oath at an investigation by City Council, willfully swears falsely, said person is guilty of a Class 1 misdemeanor.

**Sec. 38-119.10. Public records.**

Unless provided otherwise by federal or state law, all records produce by or to the hearing board shall be considered a public record.

**Sec. 38-119.11. Interpretation and effect.**

Nothing in this article shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any existing federal or state law. Nothing in this ordinance shall be construed as supporting or advocating any particular lifestyle or religious view. To the contrary, it is the intention of this ordinance that all persons be treated fairly and equally.

Unless otherwise prohibited by law, nothing contained in this article shall be construed to prohibit diversity and inclusion efforts and promotional activities and practices designed primarily to encourage participation by members of any historically marginalized protected group, in furtherance of the purposes of this article.

This article does not create a private cause of action under Chapter 38, Article V of the City Code.

**Sec. 38-119.12. State and Federal Laws.**

This ordinance may not be construed to limit any other remedies available under state or federal law. At any point during this process, the complainant may pursue any and all rights and remedies afforded by state and federal law.

**Sec. 38.119.13. Severability.**

In the event any section, subsection, subdivision, paragraph, subparagraph, item, sentence, clause, phrase or word of this ordinance is declared or adjudged to be invalid or unconstitutional, such

declaration or adjudication shall not affect the remaining provisions of this ordinance which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not original part of this ordinance.

**Sec. 38-119.14. Education and outreach.**

Upon adoption of this ordinance, the Human Relations Department may engage in outreach and education efforts regarding this Nondiscrimination in Public Accommodations Ordinance, which efforts shall be documented for future reference.

**Sec. 38-119.15. Other remedies. This section shall become effective March 1, 2022.**

- (a) If it is determined by the Human Relations Director or the hearing board that reasonable cause exists to believe that the respondent has engaged in a violation of this article and the parties are unable to reach a conciliation of the matter, the matter shall be turned over to the City Attorney's Office to seek injunctive relief, actual damages and courts costs on behalf of the complainant which the court may award to the prevailing plaintiff party pursuant to G.S. 160A-175.
- (b) Any remedies exercised or charges made hereunder for violations of this article shall be of a civil nature only and the provisions of North Carolina Statutes section 14-4 shall not apply."

**Section 3.** A new Article VI. Nondiscrimination in Employment Ordinance. is hereby created to read as follows:

**"Article VI. Nondiscrimination in Employment Ordinance.**

**Sec. 38-120 Title.**

The rules and regulations prescribed by this article shall be known and may be cited as the Nondiscrimination in Employment Ordinance.

**Sec. 38-120.1. Declaration of policy and purpose.**

It is hereby declared to be the policy of the City in the exercise of its licensing and police powers, and under the authority of state law for the preservation of the peace and protection of the health, safety, and welfare of persons in the city, to prohibit discriminatory employment practices, as defined in this article. Consistent therewith, the purpose of this article is to secure for all individuals freedom from discrimination in connection with employment because of or based upon race, color, religion, national origin, ethnicity, color, creed, sex, sexual orientation, gender identity or gender expression, protected hairstyles, pregnancy, disability, age, veteran status, marital status, familial status or political affiliation. Hence the provisions herein shall be construed to achieve the above-mentioned purpose and to promote just and fair employment practices among employers.



## **Sec. 38-120.2. Definitions.**

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

Aggrieved person means any person who:

(1) claims to be injured by a discriminatory practice of a place of public accommodation or

(2) believes that he or she will be injured by such discriminatory practice that is about to occur.

Because of sex or on the basis of sex includes pregnancy, childbirth or related medical conditions. Women affected by pregnancy, childbirth or related medical conditions shall be treated the same for all employment related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected in their ability or inability to work, and nothing in this division shall be interpreted to permit otherwise.

Commission means the City of Winston-Salem Human Relations Commission, as established by the City Council of the City of Winston-Salem in 1978.

Complainant means the person or group of persons who files a complaint with the commission in accordance with the provisions of this article.

Complaint means a written complaint which has been filed with the commission in accordance with the provisions of this article alleging one or more discriminating practices.

Conciliation means the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the respondent, and the commission.

Conciliation agreement means a written agreement setting forth the resolution of the issues in conciliation.

Director means the Director of the department where the Human Relations Department is located, or designee of the Director, or the City Manager.

Disability with respect to a person means

- (1) Having a physical or mental impairment which substantially limits one or more of a person's major life activities; or
- (2) Having a record of such impairment; or
- (3) Being regarded as having such an impairment.

Discriminatory practice or discrimination means an act that is prohibited under this article or otherwise has the effect of subjecting a person to differential treatment as a result of that person's actual or perceived race, color, religion, national origin, ethnicity, color, creed, sex,

sexual orientation, gender identity or gender expression, protected hairstyles, pregnancy, disability, age, veteran status, marital status, familial status, or political affiliation.

Employee means an individual employed by an employer, except that the term "employee" shall not include any person elected to public office in any state or political subdivision of any state by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy-making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a state government, governmental agency, or political subdivision.

Employer means any person employing one or more persons within the Winston-Salem city limits.

Employment agency means a 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.

Familial status means one or more individuals (who has not attained the age of 18 years) being domiciled with:

(1) A parent or another person having legal custody of such individual; or

(2) The designee of such parent or other person having such custody, with the written permission of such parent or other person.

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 18 years.

Family includes a single individual.

Financial institution means any banking corporation or trust company, savings and loan association, credit union, insurance company, or related corporation, partnership, foundation, or other institution engaged primarily in lending or investing funds.

Gender expression means external appearance of one's gender identity, usually expressed through behavior, clothing, body characteristics or voice, and which may or may not conform to socially defined behaviors and characteristics typically associated with being either masculine or feminine.

Gender identity means one's innermost concept of self as male, female a blend of both or neither, including how individuals perceive or references themselves. The term refers to how individuals see themselves and what they call themselves. One's gender identity can be the same or different from their sex assigned at birth.

Hearing board shall mean the hearing board of the Winston-Salem Human Relations Commission as defined in Article IV of Chapter 38 of the code of the City of Winston-Salem.

Human Relations Department means the Human Relations Department of the City of Winston-Salem.

Human Relations Director means the Human Relations Department Director of the Human Relations Department of the City of Winston-Salem or the designee of said director.

National origin means an individual's actual or perceived characteristics related to the individual's place of birth, the individual's ancestor's place of birth, language, culture, accent, ethnicity, or appearance of ethnicity. The term national origin shall be interpreted to include discrimination on the basis of hair texture and hairstyles that are commonly associated with one's national origin.

Parties shall mean the complainant and respondent, as defined by this article.

Person includes one or more individuals, partnerships, associations, corporations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receipts, or any other legal or commercial entity.

Protected hairstyle means any hairstyle, hair type, or hair texture historically associated with race such as, but not limited to, braids, locks, twists, tight coils or curls, cornrows, Bantu knots, and afros.

Race the term race shall be interpreted to include discrimination on the basis of hair texture and hairstyles that are commonly associated with one's race.

Respondent means the person against whom a complaint is filed under this article.

Religion means all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he/she/they 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.

Sex consistent with the decision of *United States Supreme Court in Bostock v. Clayton County*, 140 S. Ct. 1731 (2020), the term "sex" or the phrase on the "basis of sex" or "because of sex" shall expressly include sexual orientation, gender identity, gender expression and any other protected category held to be covered by said term and phrases in the aforementioned case.

Sexual orientation means a person's actual or perceived emotional, romantic, or sexual attraction to other people, which includes, but is not limited to, homosexuality, heterosexuality, or bisexuality.

### **Sec. 38-120.3. Employers; prohibited practices.**

It is a discriminatory practice and a violation of this article for an employer:

- (1) To fail or refuse to hire, to discharge, or to otherwise discriminate against an individual with respect to compensation or terms, conditions or privileges of employment because of or based upon race, color, religion, national origin, ethnicity, color, creed, sex, sexual orientation, gender identity or gender expression, protected hairstyles, pregnancy, disability, age, veteran status, marital status, familial status, or political affiliation.
- (2) To 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 or based upon race, color, religion, national origin, ethnicity, color, creed, sex, sexual orientation, gender identity or gender expression, protected hairstyles, pregnancy, disability, age, veteran status, marital status, familial status, or political affiliation.

#### **Sec. 38-120.4. - Employment agencies.**

It is a discriminatory practice and a violation of this article for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against an individual, because of or based upon race, color, religion, national origin, ethnicity, color, creed, sex, sexual orientation, gender identity or gender expression, protected hairstyles, pregnancy, disability, age, veteran status, marital status, familial status, or political affiliation.

#### **Sec. 38-120.5. Training programs.**

It is a discriminatory practice and a violation of this article for an employer to discriminate against an individual because of or based upon race, color, religion, national origin, ethnicity, color, creed, sex, sexual orientation, gender identity or gender expression, protected hairstyles, pregnancy, disability, age, veteran status, marital status, familial status, or political affiliation in admission to or employment in a program established to provide apprenticeship or other training.

#### **Sec. 12-120.6. Other discriminatory practices.**

It is a discriminatory practice and a violation of this article for an employer or employment agency to print or publish, or cause to be printed or published, a notice of advertisement relating to employment by the employer or referral for employment relating to a classification or referral for employment by the employment agency, indicating a preference, limitation, specification or discrimination because of or based on race, color, religion, national origin, ethnicity, color, creed, sex, sexual orientation, gender identity or gender expression, protected hairstyles, pregnancy, disability, age, veteran status, marital status, familial status, or political affiliation, unless otherwise allowed by federal or state law, such as preference for veterans.

#### **Sec. 38-120. 7. Exemptions and defenses.**

- (a) This article shall not apply to a religious corporation, association or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by the corporation, association, or society of its religious activities.
- (b) It is not a discriminatory practice or a violation of this article:
- (1) For a religious educational institution, or an educational organization operated, supervised or controlled by a religious institution or organization, to limit employment or give preference to members of the same religion.
  - (2) For an employer, employment agency or training program:
    - a. To observe the terms of a bona fide seniority system or any bona fide employee benefit plan, such as retirement, pension or insurance plan, which is not a subterfuge to evade the purposes of this article, except that no such employees' benefit plan shall excuse the failure to hire an individual.
    - b. To discharge or otherwise discipline an individual for good cause.
  - (3) 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 of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of or based upon race, color, religion, national origin, ethnicity, color, creed, sex, sexual orientation, gender identity or gender expression, protected hairstyles, pregnancy, disability, age, veteran status, marital status, familial status, or political affiliation; nor is it an prohibited practice for an 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 or based upon race, color, religion, national origin, ethnicity, color, creed, sex, sexual orientation, gender identity or gender expression, protected hairstyles, pregnancy, disability, age, veteran status, marital status, familial status, or political affiliation.
- (c) It is not prohibited or a violation of this article for:
- (1) An employer to employ, admit, classify, or refer any individual on the basis of race, color, religion, national origin, ethnicity, color, creed, sex, sexual orientation, gender identity or gender expression, protected hairstyles, pregnancy, disability, age, veteran status, marital status, familial status, or political affiliation in such circumstances when race, color, religion, national origin, ethnicity, color, creed, sex, sexual orientation, gender identity or gender expression, protected hairstyles, pregnancy, disability, age, veteran status, marital status, familial status, or political affiliation is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.

- (2) An employer to print or publish, or caused to be printed or published, any notice or advertisement indicating any preference, limitation, specification, or discrimination, based on race, color, religion, national origin, ethnicity, color, creed, sex, sexual orientation, gender identity or gender expression, protected hairstyles, pregnancy, disability, age, veteran status, marital status, familial status, or political affiliation in such circumstances when race, color, religion, national origin, ethnicity, color, creed, sex, sexual orientation, gender identity or gender expression, protected hairstyles, pregnancy, disability, age, veteran status, marital status, familial status, or political affiliation is a bona fide occupation qualification for employment.
- (3) A school, college, university, or other educational institution, or institution of learning to hire and employ employees 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.
- (4) 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 of production or to employees who work in different locations, so long as the differences are not the result of an intention to discriminate because of or based upon race, color, religion, national origin, ethnicity, color, creed, sex, sexual orientation, gender identity or gender expression, protected hairstyles, pregnancy, disability, age, veteran status, marital status, familial status, or political affiliation.
- (5) An employer to give and to act upon the results of any professionally developed ability test provided that the test, its administration, or action upon the results is not designed, intended, or used to discriminate because of or based upon race, color, religion, national origin, ethnicity, color, creed, sex, sexual orientation, gender identity or gender expression, protected hairstyles, pregnancy, disability, age, veteran status, marital status, familial status, or political affiliation.
- (6) An employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of the employer if the differentiation is authorized by the provisions of section 6(d) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. § 206(d)).

- (7) An employer to refuse to assign or continue to assign an individual to a job involving food handling in any case in which such individual has an infectious or communicable disease that is:
- a. Transmitted to others through the handling of food;
  - b. Is included on the list developed by the Secretary of the United States Department of Health and Human Services pursuant to section 103(d) of the Americans with Disabilities Act of 1990, (42 U.S.C. §§ 12101, et seq.); and
  - c. Cannot be eliminated by reasonable accommodation. Nothing in this subsection shall be construed to preempt, modify, or amend any state, county, or local law, ordinance, or regulation applicable to food handling.
- (d) The prohibitions in this article against discrimination based upon disability shall not be construed to prohibit or restrict:
- (1) An insurer, hospital, medical service company, health maintenance organization, or any agent, or entity that administers benefit plans, or similar organizations from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or
  - (2) A person or organization covered by this article from establishing, sponsoring, observing, or administering the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering those risks that are based on or not inconsistent with State law; or
  - (3) A person or organization covered by this article from establishing, sponsoring, observing, or administering the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance.
- (e) Nothing in this article shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit which such individual chooses not to accept;
- (f) Nothing contained in this article shall apply to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.
- (g) With respect to discrimination based on age, it is not unlawful for an employer to take any action otherwise prohibited under this article:
- (1) Where the differentiation is based on reasonable factors other than age;
  - (2) Where such practices involve an employee in a workplace in a foreign country, and compliance with those subsections would cause such employer, or a corporation

controlled by such employer, to violate the laws of the country in which such workplace is located; or

- (3) To observe the terms of a bona fide seniority system; or
- (4) To observe the terms of a bona fide employee benefit plan; or
- (5) To discharge or otherwise discipline an individual for good cause.

(h) Nothing in this article shall be construed to prohibit compulsory retirement of any employee who has attained 65 years of age provided such retirement is part of a practice consistent with a bona fide employee retirement plan.

(i) Nothing in this article shall prohibit the use of a person's unfavorable discharge from military service as a valid employment or employment eligibility criterion where:

(1) Authorized by federal or state law, or

(2) Due to business necessity.

(j) Nothing in this article shall prohibit an employer from giving preferential treatment to veterans and their relatives.

(k) 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 that are due to a business necessity and that are not prohibited by federal, state or local law.

(l) Nothing in this article shall require an employer to hire unqualified individuals or to retain employees when there is a non-discriminatory or non-retaliatory reason to terminate employment.

(m) Nothing in this article shall require any individual, business, club, institution, or membership organization to take action in violating of the rights granted by the Constitutions of the United States and North Carolina.

(n) Nothing in this article shall not apply to the Forsyth County or any city located therein, the state or the federal government.

#### **Sec. 38-120.8. Filing a complaint.**

Any person claiming to be aggrieved by a discriminatory practice in violation of any provisions of this article may file a written complaint with Human Relations Department within sixty (60) days after the alleged violation occurred, setting forth the facts upon which the complaint is based, and setting forth facts sufficient to enable the Human Relations Department to identify the person against whom the complaint is filed (hereinafter called the respondent). Notice of the complaint (including the date, place and circumstances of the alleged prohibited discriminatory practice) shall be served by the Human Relations Director upon the respondent by certified mail within ten (10) days after filing. The Human Relations Director shall commence an investigation by initiating a review of the allegations set forth in the complaint. To the extent an employee wishing to file an



employment discrimination complaint pursuant to this article is subject to an employment contract or other arrangement that requires arbitration or mediation before pursuing other remedies, the time period for filing a complaint shall be extended and the person claiming to be aggrieved may file a complaint within sixty (60) days from the completion of the arbitration or mediation process set for in said employment contract or other employment arrangement.

**Sec. 38-120.9. Initial investigation and review; conciliation.**

Not later than sixty (60) days after the complaint is filed, unless for good reason the time is extended for an additional sixty (60) days by the Human Relations Department Director, said Director shall determine whether there is reasonable cause to believe that the respondent has violated any provisions of this article. The Human Relations Director shall notify the parties of said determination in writing. If reasonable cause is found, staff of the Human Relations Department shall endeavor within sixty (60) days, unless there are extenuating circumstances by conference and conciliation with the parties to reach a voluntary and amicable solution to the alleged discriminatory practice. If the Human Relations Department Director is unable to obtain a voluntary conciliation and resolve, the complainant and respondent shall be so notified in writing within ten (10) days from such determination.

**Sec. 38-120.10. No cause finding by Human Relations Director; appeal to hearing board.**

- (a) If it is decided by the Human Relations Director that there is no reasonable cause to believe that the respondent has engaged in a discriminatory practice in violation of this article, the Human Relations Director shall notify the complainant and the respondent in writing of said determination within ten (10) days after such determination has been made.
- (b) The complainant, within ten (10) days after receiving a copy of a no cause finding, may file a written appeal with the Human Relations Department Director. Upon receiving such appeal, the Human Relations Director shall refer the matter to a hearing board. The hearing board shall complete its review and determination within thirty (30) days after the appeal is filed, unless there are extenuating circumstances necessitating a delay as determined by the hearing board. If the hearing board determines that there is no reasonable cause to believe that the respondent has engaged in a discriminatory practice, the hearing board shall notify the complainant and the respondent in writing of its determination within ten (10) days after such determination has been made. However, if the hearing board finds that there is reasonable cause to believe that the respondent has violated any provisions of this, the hearing board shall endeavor, through staff of the Human Relations Department within thirty (30) days, unless there are extenuating circumstances as determined by the hearing board, by conference and conciliation with the parties to reach a voluntary and amicable solution to the alleged discriminatory practice. If the hearing board determines that it is unable to obtain a voluntary conciliation and resolve the complaint, the complainant and respondent shall be so notified in writing within ten (10) days from such determination.

**Sec. 38-120.11. Hearing election.**

- (a) Unless the Human Relations Director or the hearing board has decided that there is no reasonable cause to believe that a discriminatory practice has occurred, or unless a conciliation agreement has been negotiated, a hearing board shall hold a hearing, if the parties agree to such, after proper notice. The complainant and respondent must agree to participate in said hearing.
- (b) If the hearing board determines as a result of the hearing that there is no reasonable cause to believe that the respondent has engaged in a discriminatory practice in violation of this article, the hearing board shall state its findings of fact and conclusions of law and shall issue an order dismissing the complaint, and furnish a copy of the order to the complainant, the respondent, the city attorney and such other persons as the hearing deems proper.
- (c) If the hearing board determines, by reasonable cause pursuant, that the respondent has engaged in a discriminatory practice in violation of this article, the hearing board shall state its findings of fact and conclusions of law. If a conciliation agreement has not been negotiated, the hearing board may refer the matter to the city attorney pursuant to Sec. 38-120.18. A copy of the findings of facts, conclusions of law, and recommendations and any negotiated conciliation agreement shall be delivered to the complainant, the respondent, the city attorney and such other persons as the hearing board deems proper.

**Sec. 38-120.12. Failure to cooperate; power of investigation; subpoena power.**

- (a) In the event the respondent or complainant fails to cooperate with the investigation by the Human Relations Department, City Council shall have power to investigate the affairs of the City, and for that purpose may subpoena witnesses, administer oaths, and compel the production of evidence with respect to any complaint filed under this article.
- (b) If a person fails or refuses to obey a subpoena issued pursuant to this section, City Council may apply to the General Court of Justice for an order requiring that its order be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties. No testimony of any witness before City Council pursuant to a subpoena issued in exercise of the power conferred by this section may be used against him on the trial of any civil or criminal action other than a prosecution for false swearing committed on the examination. If any person, while under oath at an investigation by City Council, willfully swears falsely, said person is guilty of a Class 1 misdemeanor.

**Sec. 38-120.13. Public Records.**

Unless otherwise provided by federal or state law, all records produce by or to the hearing board shall be considered a public record.

**Sec. 38-120.14. Interpretation and Effect.**

Nothing in this article shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any existing federal or state law. Nothing in this ordinance shall be

construed as supporting or advocating any particular lifestyle or religious view. To the contrary, it is the intention of this ordinance that all persons be treated fairly and equally.

Unless otherwise prohibited by law, nothing contained in this article shall be construed to prohibit diversity and inclusion efforts and promotional activities and practices designed primarily to encourage participation by members of any historically marginalized protected group, in furtherance of the purposes of this article.

This article does not create a private cause of action under Chapter 38, Article VI of the City Code.

#### **Sec. 38-120.15. State and Federal Law.**

This ordinance may not be construed to limit any other remedies available under state or federal law. At any point during this process, the complainant may pursue any and all rights and remedies afforded by state and federal law.

#### **Sec. 38-120.16. Severability.**

In the event any section, subsection, subdivision, paragraph, subparagraph, item, sentence, clause, phrase or word of this ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining provisions of this ordinance which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not original part of this ordinance.

#### **Sec. 38-120.17. Education and outreach.**

Upon adoption of this ordinance, the Human Relations Department may engage in outreach and education efforts regarding this Nondiscrimination in Employment Ordinance, which efforts shall be documented for future reference.

#### **Sec. 38-120.18. Other remedies. This section shall become effective March 1, 2022.**

- (a) If it is determined by the Human Relations Department Director or the hearing board that reasonable cause exists to believe that the respondent has engaged in a violation of this article and the parties are unable to reach a conciliation of the matter, the matter shall be turned over to the City Attorney's Office to seek injunctive relief, actual damages and courts costs on behalf of the complainant which the court may award to the prevailing plaintiff party pursuant to G.S. 160A-175.
- (b) Any remedies exercised or charges made hereunder for violations of this article shall be of a civil nature only and the provisions of North Carolina Statutes section 14-4 shall not apply."

**Section 4.** Except as otherwise provided, this ordinance shall become effective January 1, 2022.