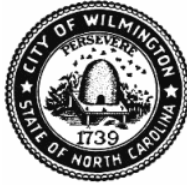


Ordinance



City Council
City of Wilmington
North Carolina

Introduced By: Anthony N. Caudle, Interim City Manager

Date: 8/17/2021

Ordinance Prohibiting Discrimination in Public Accommodations Within the City of Wilmington

LEGISLATIVE INTENT/PURPOSE:

WHEREAS, N.C. General Statute §160A-174 grants cities the general power to, by ordinance, define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the city, so long as such regulation is not preempted by either federal or state law; and

WHEREAS, the city of Wilmington is opposed to harassment or discrimination on the basis of race, color, religion, sex (including sexual orientation, gender identity, and pregnancy), or national origin, and finds that such practices are detrimental to the health, safety, or welfare of the citizens and the peace and dignity of the city; and

WHEREAS, although the Code of Ordinances for the city of Wilmington and multiple city policies currently address issues of discrimination in city employment and with regard to outside contracting with the city, there is no specific prohibition within the city Code to address discrimination within places of public accommodation in the city; and

WHEREAS, neither state nor federal law currently addresses discrimination in public accommodations on the basis of sex (including sexual orientation, gender identity, and pregnancy), and the city is therefore not preempted from regulation of discrimination in public accommodations on this basis; and

WHEREAS, federal law, as codified in 42 U.S.C. Chapter 21, Subchapter 2, §2000a, provides that all persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, without discrimination or segregation, on the ground of race, color, religion, or national origin; and

WHEREAS, 42 U.S.C. Chapter 21, Subchapter 2, §2000a-6, further provides that State and local agencies are specifically not precluded from asserting any right based on any other federal or state law not inconsistent with the provisions relating to discrimination in public accommodations, or from pursuing any remedy which may be available for the vindication or enforcement of such right; and

WHEREAS, the city of Wilmington is not currently preempted by either federal or state law from regulation of discrimination in public accommodations on the basis of race, color, religion, sex (including sexual orientation, gender identity, and pregnancy), or national origin.

THEREFORE, BE IT ORDAINED:

SECTION 1. Chapter 4, Article I., Section 4-1 of the Code of Ordinances, City of Wilmington, North Carolina, is hereby amended to read as follows:

- “(a) A violation of any of the provisions of this chapter, except Section 4-4, shall constitute a misdemeanor, punishable as provided in G.S. section 14-4.
- (b) Except as otherwise provided herein, a violation of any provision of this chapter, shall also subject the offender to a civil penalty of twenty-five dollars (\$25.00).
- (c) Any violations of the provisions of section 4-2 shall subject the offender to the following civil penalties:
 - (1) For a first or second violation within any twelve (12) consecutive month period, no civil penalty.
 - (2) For a third violation within any twelve (12) consecutive month period, fifty dollars (\$50.00) for a false fire alarm and twenty-five dollars (\$25.00) for any other violation of section 4-2.
 - (3) For a fourth and any subsequent violation within a twelve (12) consecutive month period, one hundred dollars (\$100.00) for each false fire alarm and fifty dollars (\$50.00) for any other violation of section 4-2.
 - (4) If a person fails to pay the civil penalties set forth in this subsection within ten (10) days after being cited for a violation, the city may seek to recover the penalty by filing a civil action in the nature of debt.
- (d) Any violations of the provisions of section 4-4 shall subject the offender to the following civil penalties:
 - (1) For a first violation, no monetary civil penalty will be assessed, but the violator will be issued a written warning and given a copy of the ordinance and an opportunity to speak with city staff.
 - (2) For a second violation, two hundred fifty dollars (\$250.00).
 - (3) For a third violation, five hundred dollars (\$500.00).

- (4) For a fourth and any subsequent violation, one thousand dollars (\$1,000.00).
- (5) For a fifth and any subsequent violation, in addition to the monetary penalty provided for herein, the city may also file an injunction against the business permit holder.
- (6) If a person fails to pay the monetary civil penalties set forth in this subsection within ten (10) days after being cited for a violation, the city may seek to recover the penalty by filing a civil action in the nature of debt.
- (e) Any violations of the provisions of section 4-109 shall subject the offender to a civil penalty of one hundred dollars (\$100.00). If a person fails to pay this civil penalty within ten (10) days after being cited for a violation, the city may seek to recover the penalty by filing a civil action in the nature of a debt.
- (f) Violations of the provisions of Article V shall subject the offender to the following civil penalties:
 - (1) For a first violation within any twelve (12) consecutive month period, fifty dollars (\$50.00).
 - (2) For a second violation within any twelve (12) consecutive month period, one hundred dollars (\$100.00).
 - (3) For a third and any subsequent violation within any twelve (12) consecutive month period, two hundred dollars (\$200.00).
 - (4) If a person fails to pay this civil penalty within ten (10) days after being cited for a violation, the city may seek to recover the penalty by filing a civil action in the nature of debt.
- (g) The city may seek to enforce this chapter through any appropriate equitable action.
- (h) Each day that a violation continues after the offender has been notified of the violation shall constitute a separate offense.
- (i) The city may seek to enforce this chapter by using any one or any combination of the foregoing remedies.”

SECTION 2. Chapter 4, Article I., of the Code of Ordinances, City of Wilmington, North Carolina, is hereby amended by adding a section, to be numbered “Sec. 4-4. - Prohibition on Discrimination in Public Accommodations,” which section reads as follows:

“(a) “Public Accommodations” are defined, for the purpose of this section, to include the following establishments:

- (1) Any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence;
- (2) Any restaurant, cafeteria, lunchroom, lunch counter, food hall, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment or any gasoline station;
- (3) Any motion picture house, theater, concert hall, sports arena, stadium, or other place of exhibition or entertainment; and
- (4) Any establishment meeting one of the following criteria and holding itself out as serving patrons of such covered establishment:
 - (i) Which is physically located within the premises of any establishment otherwise covered by this section; or
 - (ii) Which is within the premises of which is physically located any such covered establishment.

(b) It shall be unlawful to deny any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation on the basis of race, color, religion, sex (including sexual orientation, gender identity, and pregnancy), or national origin.

(c) It shall be unlawful 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 on the basis of race, color, religion, sex (including sexual orientation, gender identity, and pregnancy), or national origin, or that any person’s patronage of or presence at a place of public accommodation is objectionable, unwelcome, unacceptable, or undesirable on such basis.

(d) This section does not apply to a private club or other establishment which is not, in fact, open to the public.

(e) This section does not apply to multiple occupancy restrooms, showers, or changing facilities.”

SECTION 3. The city manager shall establish a procedure which will, according to his

discretion, appropriately and adequately investigate and address any claims of discrimination in public accommodations on the basis of race, color, religion, sex (including sexual orientation, gender identity, and pregnancy), or national origin within the city of Wilmington.

SECTION 4. Any and all legal rights, remedies, and defenses to a charge of discrimination in public accommodations recognized under applicable federal and state law or constitutions shall also be applicable to a charge of discrimination in public accommodations under this ordinance.

SECTION 5. Nothing in this section shall be interpreted or applied so as to create any unique requirement, power, duty, or liability in conflict with any existing federal or state law or either the federal or state constitutions.

SECTION 6. Should it ever be determined that city regulation of any section, subsection, paragraph, sentence, clause, phrase, or portion provision of this ordinance is determined to be preempted by either federal or state law, such portion shall be deemed severable and such determination shall not affect the validity of any remaining portions hereof which are not found to be preempted.

SECTION 7. If any section, subsection, paragraph, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

SECTION 8. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 9. That this ordinance shall become effective on September 17, 2021.

Adopted at a _____ meeting
on _____ 2021

Bill Saffo, Mayor

ATTEST:

APPROVED AS TO FORM:

Penelope Spicer-Sidbury, City Clerk

City Attorney