

**AN ORDINANCE TO AMEND THE CODE OF ORDINANCES OF THE CITY OF TUCKER, GEORGIA, BY ADOPTING A NEW ARTICLE VIII, “UNLAWFUL DISCRIMINATION” IN CHAPTER 30, “OFFENSES AND MISCELLANEOUS PROVISIONS” AND FOR ALL OTHER LAWFUL PURPOSES**

Be it ordained and it is hereby ordained by the Mayor and City Council of Tucker, Georgia that the Code of Ordinances of the City of Tucker shall be amended as follows:

**PART I:**

A new Article VIII titled “Unlawful Discrimination” shall be created in Chapter 30, “Offenses and Miscellaneous Provisions”, which shall read as follows:

**ARTICLE VIII – UNLAWFUL DISCRIMINATION**

**Sec. 30-301 - Purpose and Intent.** It is the purpose and intent of the Mayor and City Council of Tucker to protect and safeguard the right and opportunity of all persons to be free from unjust discrimination, including discrimination based on actual or perceived sex, sexual orientation, gender identity, race, color, age, disability, national origin, religion, marital status, familial status, veteran or military status. The Mayor and Council's purpose in enacting this ordinance is to promote the public health and welfare of all persons who live and work in the City of Tucker. It is important for the City to ensure that persons within the City have access to employment, housing, and public accommodations that is unfettered by unwarranted prejudice.

The City of Tucker hereby declares that it is intended that whenever possible any complaints arising under this article be resolved by good faith discussion, mediation or other forms of voluntary dispute resolution. The City of Tucker further expresses its desire that to the extent possible the parties to any complaint under this article shall work to resolve the complaint with the goals of inclusion and compliance.

**Sec. 30-302- Definitions.** For the purposes of this article, the following terms shall have the following meanings:

- (1) **AGE.** An individual's status as having obtained forty or more years of age.
- (2) **DISCRIMINATE, DISCRIMINATION OR DISCRIMINATORY.** Any act, policy or practice that, regardless of intent, has the effect of subjecting any person to differential treatment as a result of that person's actual or perceived sex, sexual orientation, gender identity, race, color, age, disability, national origin, religion, marital status, familial status, veteran or military status.
- (3) **EMPLOYEE.** Any individual employed by or seeking employment from an employer, excluding any individual employed by his or her parents, spouse or ex-spouse, or child.
- (4) **EMPLOYER.** A person who employs one or more employees in the City of Tucker, or any agent of such person. For purposes of this article, the term “employer” shall not include any government entity, department, or agency.

- (5) **FAMILIAL STATUS.** Means an individual's past, current or prospective status as parent or legal guardian to a child or children below the age of eighteen (18) who may or may not reside with that individual.
- (6) **GENDER IDENTITY.** The actual or perceived gender-related identity, expression, appearance, or mannerisms, or other gender-related characteristics of an individual, regardless of the individual's designated sex at birth.
- (7) **HEARING OFFICER.** A person charged with determining the validity of alleged violations of this article, and upon determining that a violation has occurred, assessing appropriate damages, penalties, fines or costs. The hearing officer shall be a member of the State Bar of Georgia in good standing and have been a practicing attorney for at least five (5) years.
- (8) **MARITAL STATUS.** An individual's past, current, or prospective status as single, married, domestically partnered, in a civil union, divorced, or widowed.
- (9) **MEDIATOR.** A qualified neutral third party registered with the Georgia Office of Dispute Resolution that will attempt to assist the complainant and the respondent(s) to arrive at a mutual agreement to resolve a complaint.
- (10) **MEDIATION.** A process through which the parties seek to reach an agreed upon resolution of their differences, with the guidance of a neutral mediator. The mediator is not an arbitrator and does not render a ruling. Information provided to the mediator by the parties shall remain confidential unless otherwise consented to by the parties.
- (11) **NATIONAL ORIGIN.** An individual's, or an individual's ancestor's, place of origin.
- (12) **PLACE OF PUBLIC RESORT, ACCOMMODATION, ASSEMBLAGE, OR AMUSEMENT.** Any place, store, or other establishment, either licensed or unlicensed, that supplies accommodations, goods, or services to the general public, or that solicits or accepts the patronage or trade of the general public, or that is supported directly or indirectly by government funds. This term does not include any private club, bona fide membership organization or other establishment that is not in fact open to the public.
- (13) **RELIGION.** All aspects of religious belief, observance, and practice.
- (14) **RELIGIOUS ORGANIZATION.** An entity which conducts regular worship services OR is qualified as a religious organization under Section 501(c)(3) of the Internal Revenue Code of 1986 as now or hereafter amended, that is not required to file IRS Form 990, return of Organization Exempt from Income Tax.
- (15) **RESPONDENT.** The person alleged by the Complainant to have violated a provision of this Article.
- (16) **SEXUAL ORIENTATION.** Actual or perceived homosexuality, heterosexuality, bisexuality or asexuality.
- (17) **VERIFIABLE DELIVERY** means hand delivery, electronic mail, certified mail, or statutory overnight delivery, provided that the means of delivery allows for verification of the delivery of such notice.
- (18) **VETERAN/MILITARY STATUS.** An individual's status as one who serves or served in the United States uniformed services, Army, Navy, Marine Corps, Air Force, Space

Force, Coast Guard, the Army National Guard, Air National Guard and Reserve components of federal military service, and the Commissioned Public Health Service, and who was discharged or released under conditions other than dishonorable.

**Sec. 30-303 - Civil Rights Declared.** The right of an otherwise qualified person to be free from discrimination because of that person's actual or perceived sex, sexual orientation, gender identity, race, color, age, disability, national origin, religion, marital status, familial status, veteran or military status, is recognized as and declared to be a civil right to the extent of the following:

- (1) The right to obtain and hold employment and the benefits associated therewith without discrimination.
- (2) The right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement without discrimination.
- (3) The right to engage in property transactions, including obtaining housing for rental or sale and credit therefore, without discrimination.
- (4) The right to participate as a witness, testify, and exercise any right granted under this article without suffering coercion or retaliation.

**Sec. 30-304 - Exceptions.**

- (1) A religious organization that employs an individual of a particular religion to perform work connected with the organization that insists that the employee adhere to the tenets of the religious organization as a condition of employment.
- (2) This article does not prohibit a religious organization from limiting its non-commercial accommodations, advantages, facilities, membership, and privileges.
- (3) An employer is not required to employ unqualified or incompetent personnel.
- (4) This article does not prohibit an employer from requiring an employee, during the employee's hours at work, to adhere to reasonable and equitable dress or grooming standards not prohibited by other provisions of federal, state or local law, provided that all employees are permitted to dress in a manner consistent with their gender identity.
- (5) This article does not prohibit a private club in fact not open to the public, which as an incident to its primary purpose provides accommodations and facilities, which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy to its members or from giving preference to its members.
- (6) An employer is not required to make changes to any existing facility that would require a building permit, except as otherwise required by the Americans with Disabilities Act or other provisions of law.
- (7) Housing designated for senior living or for individuals with disabilities, or as otherwise designated or directed by the United States Department of Housing and Urban Development or the State of Georgia and other exceptions included under the Fair Housing Act.

- (8) A place of public accommodation to afford beneficial pricing or policies to senior citizens, veterans, students or individuals with disabilities.
- (9) A place of public accommodation that includes single-sex designated areas within the place of public accommodations, as long as the place of public accommodation does not discriminate on any other basis identified in this article.
- (10) The right of a place of public accommodation to remove or cause to be removed from such place any person under the influence of alcohol or other drugs, or who is engaged in boisterous conduct or conduct that would constitute criminal activity under any state or federal criminal law, or who violates any regulation of any place of public accommodation that applies to all persons, regardless of sex, sexual orientation, gender identity, race, color, age, disability, national origin, religion, marital status, familial status, veteran or military status.

**Sec. 30-305 - Enforcement.** Subject to the procedures developed by the City of Tucker, the City shall receive, review , seek to resolve, hold hearings on and/or pass upon complaints alleging violations of this article. Nothing in this article shall preclude the Hearing Officer from seeking voluntary compliance with the provisions of this article, or from enforcing this article through notices or warnings of violations or through other informal means designed to achieve compliance in the most efficient and effective manner under the circumstances.

- (1) Any person desiring to allege that they have been aggrieved by a violation of any of the rights declared in Section 30-303 on an impermissible basis as described in this article may file a complaint with the City Clerk on a form to be provided by the city. The complaint form shall include, but is not limited to, the full name of the complainant, the identity and address of the alleged respondent and a description of the actions alleged to constitute a violation of this article. The complainant shall verify the complaint by providing a sworn statement that the allegations of the complaint are true to the best of the complainant's knowledge and belief. The City Clerk shall not accept for filing any complaint that fails to comply with the foregoing requirements. Any such complaint must be filed within ninety (90) calendar days after the alleged act of discrimination. A filing fee of \$50 shall be paid by the complainant at the time of filing.
- (2) Upon receipt of a complaint meeting the requirements of subsection (1) above, the city clerk shall notify the Chief Judge of the Municipal Court who shall select a Hearing Officer, from a list of Hearing Officers appointed by the city in the same manner as members of boards, commissions, and authorities pursuant to Section 2.14(a) of the City Charter. Said Hearing Officer shall be charged with responsibility of fulfilling the duties prescribed by this article and when conducting hearings under this article, the exercise of the subpoena power and the imposition of civil penalties shall be subject to the supervision of the Chief Judge.
- (3) To avoid multiple legal actions, if the complainant has filed a complaint with a state or federal agency or court alleging the same facts, the Hearing Officer will dismiss the City of Tucker complaint to allow the appropriate state or federal agency or court to address the allegations.
- (4) If the complaint states a claim that would be a violation of existing state or federal law

or is within the jurisdiction of a state or federal agency, the Hearing Officer shall refer the complainant to the appropriate agency for action and dismiss the complaint.

- (5) The City Clerk shall cause the complaint to be served to the respondent within seven (7) business days of receipt of properly filed complaint via verifiable delivery. The respondent named in the complaint shall have thirty (30) business days to file an answer to the complaint provided, however, the respondent shall have no obligation to file an answer to any complaint. The City will provide a form for the respondent but its use will not be mandatory. The respondent shall verify the answer to the complaint by providing a sworn statement that the answer to the complaint is true to the best of the respondent's knowledge and belief.
- (6) The City Clerk shall cause a copy of the complaint to be served upon the Hearing Officer three (3) business days of receipt of properly filed complaint, via electronic mail.
- (7) The Hearing Officer shall have fifteen (15) business days to review the complaint and answer, if any, to determine if the complaint is in conformity with the requirements of this article and alleges facts sufficient enough to invoke the provisions and procedures set forth in this article. Should the Hearing Officer determine that the complaint does not meet requirements by virtue of failing to meet either the procedural requirements of this article or for failing to allege facts sufficient enough to invoke the provisions of this article, he/she may dismiss the complaint stating the reasons for dismissal in a written report.
- (8) The Hearing Officer shall have the authority to request information from applicable state and/or federal agency(ies) and to share information on referred complaints under this article with the applicable state and/or federal agency(ies).
- (9) Upon determination that the complaint may proceed, the Hearing Officer shall refer the complaint to a mediator for non-binding mediation. Notice of mediation will be sent to the complainant and respondent not less than ten (10) business days in advance. Participation is voluntary; however, the case shall be dismissed should the complainant fail to attend and fail to show just cause for not participating.
- (10) The mediator shall be selected by the Hearing Officer from a list of state registered mediators approved by the City Manager and City Attorney. Such mediation services shall be paid by the City, up to a maximum of six (6) hours. The complainant and respondent may agree to obtain additional time with the mediator at their own cost, to be split equally, or as they otherwise agree.
- (11) The mediation shall be completed within thirty (30) days, and the Hearing Officer shall be notified by the mediator whether or not the mediation was successful within ten (10) business days of completion.
- (12) Within ten (10) business days after the mediator has notified the Hearing Officer that mediation was not successful or if the respondent elects not to participate in mediation, the complaint shall be referred to the Hearing Officer.
- (13) In all hearing officer proceedings, the burden of proof shall be placed upon the complaining party. Further, the burden of proof required to establish a violation under

this article shall be based upon a preponderance of the evidence.

- (14) The Hearing Officer shall be able to advise parties on acceptable evidence and rules for submitting such evidence.
- (15) Either party may call a witness by submitting a subpoena request in writing to the Hearing Officer, at least ten (10) business days in advance of the hearing. The request must explain the relevance of the witness. Either party may choose to be represented by legal counsel or to not testify.
- (16) Within ten (10) business days of conclusion of the hearing, the Hearing Officer shall either:
  - A) Dismiss the complaint on the grounds that facts sufficient to warrant a finding of a violation have not been established by a preponderance of the evidence, or
  - B) Find that a violation of this article has occurred, and thus the Hearing Officer may apply a civil penalty. A person or business found to have violated any provisions of this article shall be subject to a civil penalty up to \$500 for the first violation and up to \$1,000 for each subsequent violation. No such finding or penalty shall in any way be considered to be a criminal conviction.
  - C) In addition to or in lieu of a civil penalty, the Hearing Officer may request a corrective action plan for future compliance.
- (17) The Hearing Officer must submit all documentation of his/her decisions to the City Attorney and City Manager within ten (10) business days of the conclusion and determination of the claim.
- (18) Any party adversely affected by the final decision regarding the complaint may appeal within thirty (30) days to the Superior Court of DeKalb County

**Sec. 30-306 - Other Remedies.** This article shall not be construed to limit any other remedies available under local, state or federal law.

## **PART II**

The City of Tucker shall not discriminate in matters of employment on the basis of actual or perceived sex, sexual orientation, gender identity, race, color, age disability, national origin, religion, marital status, familial status, veteran or military status.

## **PART III**

Part I of this ordinance shall take effect thirty (30) days after passage. Part II of this ordinance shall take effect immediately upon its adoption.

## **PART IV**

The City Manager and City Attorney are authorized to develop administrative procedures as are necessary to give effect to this ordinance, including but not limited to establishing the appropriate rate of compensation for hearing officers and mediators.

## **PART V**

The City's Finance Director will ensure that a copy of this ordinance be distributed to every holder of an Occupational Tax Certificate within the City of Tucker at least once per year.

**PART VI**

It is hereby declared to be the intention of the Mayor and City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance.

APPROVED:

\_\_\_\_\_  
Frank Auman, Mayor

ATTEST:

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Bonnie Warne, City Clerk

(seal)