

**BOROUGH OF CONSHOHOCKEN
MONTGOMERY COUNTY, PENNSYLVANIA**

ORDINANCE NO. 3 of 2011

AN ORDINANCE OF THE BOROUGH OF CONSHOHOCKEN, MONTGOMERY COUNTY, PENNSYLVANIA, PROHIBITING DISCRIMINATION IN ACCESS TO EMPLOYMENT, HOUSING AND COMMERCIAL PROPERTY, PUBLIC EDUCATION, AND PUBLIC ACCOMMODATIONS; ESTABLISHING THE CONSHOHOCKEN HUMAN RELATIONS COMMISSION, IN ACCORDANCE WITH THE PROVISIONS OF THE PENNSYLVANIA HUMAN RELATIONS ACT, 43 P.S. §962.1; PROVIDING FOR DEFINITIONS; PROVIDING FOR PROCEDURES BEFORE THE CONSHOHOCKEN HUMAN RELATIONS COMMISSION; PROVIDING FOR PENALTIES FOR VIOLATIONS OF THIS ORDINANCE; REPEALING INCONSISTENT ORDINANCES; CONTAINING A SAVINGS CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the public policy of the United States of America, and the Commonwealth of Pennsylvania is grounded in the concept that all individuals are entitled to equality and equal protection under law, *United States Constitution*, Amendment 14; *Constitution of the Commonwealth of Pennsylvania*, Article I, §§ 26, 28; and

WHEREAS, the Borough Council of the Borough of Conshohocken finds that the population of the Borough is reflective of the general population of the United States, in that it consists of a diverse array of persons representing different characteristics based upon actual or perceived ethnicity, race, color, ancestry, religion, national origin, gender, gender identity or expression, marital and familial status, age, sexual orientation, mental or physical disabilities, use of guide or support animals or mechanical aids and sources of income; and

WHEREAS, the Borough prides itself on the diversity of its citizens and residents, and the harmonious relations which have been fostered in the Borough by a widely practiced and recognized attitude of respect among all citizens of Conshohocken; and

WHEREAS, the Borough Council finds that the direct and secondary negative effects of discrimination and discriminatory practices involving the personal characteristics described above in matters of employment, housing and commercial property, public education and public accommodation are well known and have been extensively studied, documented and demonstrated; and

WHEREAS, the practice or policy of engaging in discrimination or discriminatory practices against any individual or group, because of actual or perceived

ethnicity, race, color, ancestry, religion, national origin, gender, gender identity or expression, marital and familial status, age, sexual orientation, mental or physical disability, use of guide or support animals or mechanical aids and/or source of income is a matter of highest public concern, and constitutes a paramount threat to the rights, privileges, peace and good order of the citizens of Conshohocken and to guests and visitors of Conshohocken, that undermines the basic tenets of our freedom as citizens of the United States, and is utterly without place in this Borough, which has a storied tradition of fiercely defending the individual rights of its citizens; and

WHEREAS, Borough Council desires to establish and adopt an official policy of non-discrimination in the Borough of Conshohocken, in all matters involving employment, housing and commercial property, public education and public accommodation.

NOW THEREFORE, be it, and it is hereby **ORDAINED** by the Council of the Borough of Conshohocken, and it is hereby **ENACTED** and **ORDAINED** by authority of same as follows:

SECTION I Short Title.

This Ordinance shall be known as the "Conshohocken Human Relations Ordinance."

SECTION II Purpose and Declaration of Policy.

A. The Borough of Conshohocken finds that it is of high public importance to adopt appropriate legislation to insure that all persons, regardless of actual or perceived ethnicity, race, color, ancestry, religion, national origin, gender, gender identity or expression, marital and familial status, age, sexual orientation, mental or physical disability, use of guide or support animals or mechanical aids and/or source of income enjoy the full benefits of citizenship and are afforded equal opportunities for employment, housing, public education and public accommodation.

B. The Borough Council of Conshohocken hereby declares it to be the public policy of the Borough to foster equality and equal opportunity for all citizens, regardless of actual or perceived ethnicity, race, color, ancestry, religion, national origin, gender, gender identity or expression, marital and familial status, age, sexual orientation, mental or physical disability, use of guide or support animals or mechanical aids and/or source of income in all matters effecting employment, housing and commercial property, public education and public accommodation, and to safeguard the right of all persons to remain free of discrimination or discriminatory practices in any of the foregoing aspects of their lives.

C. Nothing in this Ordinance shall be construed as supporting, endorsing or advocating any particular doctrine, point of view, or religious belief. On the contrary, it is the express purpose and intent of this Ordinance that all persons be treated fairly and

equally, and that all persons in the Borough of Conshohocken shall be guaranteed fair and equal treatment under law.

D. This Ordinance shall be deemed an exercise of the police power of the Borough of Conshohocken, as provided under the Pennsylvania Borough Code, for the protection of the public welfare, prosperity, health and peace of the community of Conshohocken.

SECTION III Definitions.

The following words and phrases, when appearing in this Ordinance, shall have the meanings given to them under this Section.

1. **BOROUGH:** The Borough of Conshohocken, Montgomery County, Pennsylvania.

2. **BOROUGH COUNCIL:** The Borough Council of Conshohocken.

3. **DISCRIMINATION:** The treatment or consideration, or making a distinction in favor of or against, a person based on the group, class, or category to which that person belongs rather than on individual merit. For purposes of this Ordinance, discrimination shall specifically include, any discriminatory act(s) taken by any person, agency, employer, employment agency, labor organization, or public accommodation on the basis of actual or perceived ethnicity, race, color, ancestry, religion, national origin, gender, gender identity or expression, marital and familial status, age, sexual orientation, mental or physical disability, use of guide or support animals or mechanical aids and/or source of income, or any other group, class or category which is recognized under Federal or State law, including the Pennsylvania Human Relations Act, as entitled to protection under this Ordinance.

4. **DISCRIMINATORY ACTS:** All acts defined in the Pennsylvania Human Relations Act as unlawful discriminatory practices, regardless of whether the Pennsylvania Human Relations Act would define such practice as unlawful when that practice is taken on the basis of actual or perceived sexual orientation, gender identity or gender expression, marital status or familial status in education, housing, employment and public accommodations.

5. **GENDER IDENTITY OR EXPRESSION:** Self-perception, or perception by others, as male or female, including an individual's appearance, behavior, or physical characteristics, that may be in accord with, or opposed to, one's physical anatomy, chromosomal sex, or assigned sex at birth, and shall include, but is not limited to, persons who are undergoing or who have completed sex reassignment, are transgender or gender variant.

6. **EMPLOYEE:** Does not include any individuals who, as a part of their employment, reside in the personal residence of the employer.

7. EMPLOYER: Any person who employs four (4) or more employees, including the Borough, its departments, boards and commissions, and any other government agency within the jurisdiction of the Borough, save those of any government agency whose laws may be deemed preemptive of this Ordinance.

8. ORDINANCE: This Ordinance, which shall be referred to as the "Conshohocken Human Relations Ordinance."

9. PERSON: Any natural person, fraternal, civic or other membership organization, corporation, general or limited partnership, proprietorship, limited liability company, or similar business organization, including the Borough, its departments, boards and commissions, and any other for-profit and nonprofit organization.

10. PUBLIC ACCOMMODATION: Any accommodation, resort, mode of transportation or amusement which is open to, accepts, or solicits the patronage of the general public or offers goods or services, including loans, to the general public or is listed in § 4(l) of the Pennsylvania Human Relations Act, 43 P.S. § 954(l), but shall not include any accommodations which are in their nature distinctly private.

11. SEXUAL ORIENTATION: Actual or perceived homosexuality, heterosexuality and/or bisexuality.

12. Any terms of this Ordinance not expressly defined herein shall be construed in a manner consistent with the Pennsylvania Human Relations Act.

SECTION IV Unlawful Practices

A. Discrimination in employment, housing and commercial property, public education or any public accommodation is prohibited under this Ordinance.

B. Retaliation against any individual because such person has opposed any practice forbidden by this Ordinance, or because such person has made a charge, testified, or assisted in any manner in any investigation or proceeding under this Ordinance is prohibited under this Ordinance.

C. Aiding, abetting, inciting, compelling or coercing the doing of any act declared by this Ordinance to be an unlawful practice, or obstructing or preventing any person from complying with the provisions of this Ordinance is prohibited under this Ordinance.

SECTION V Exceptions

A. Notwithstanding any other provision of this Ordinance, it shall not be an unlawful practice for a religious corporation or association, not supported in whole or in

part by governmental appropriations, to refuse to hire or employ an individual on the basis of religion or religious belief.

SECTION VI Establishment of Human Relations Commission

A. Pursuant to the authority set forth under § 962.1 of the Pennsylvania Human Relations Act, 43 P.S. § 962.1, there is hereby established a Human Relations Commission for the Borough of Conshohocken, which shall be known as the "Conshohocken Human Relations Commission."

B. The Conshohocken Human Relations Commission shall consist of not less than three (3), nor more than nine (9) members, who shall be appointed to terms of three (3) years by the Borough Council. The terms of the members of the Commission shall be staggered, such that the terms of approximately one third (1/3) of the members of the Commission shall expire each year. All members of the Commission shall be residents or business owners of the Borough of Conshohocken and shall serve without compensation. Members of the Commission shall hold no other Federal, state or local public office, nor shall they hold office in any political party.

C. Borough Council shall, annually, designate one member to serve as Chairperson of the Commission. The Chairperson shall be responsible for coordinating the activities, meetings, and operations of the Commission, as set forth under this Ordinance. The Chairperson shall also report, from time to time, to the President of Council regarding the activities of the Commission.

D. Members of the Commission shall, as soon after their appointment as practical, attend such training and education seminars or sessions as deemed necessary to acquaint themselves with the functioning of the Conshohocken Human Relations Commission under this Ordinance, as well as the terms, conditions and provisions of the Pennsylvania Human Relations Act, and the operation of the Pennsylvania Human Relations Commission. Such training and education shall be as directed by the Chairperson, and shall be performed in conjunction with the state Human Relations Commission.

E. The Conshohocken Human Relations Commission shall have all of those powers necessary to execute the duties set forth under this Ordinance, provided that such powers shall not exceed those exercised by the Pennsylvania Human Relations Commission under the Pennsylvania Human Relations Act.

F. In addition to the powers delineated in paragraph E, above, the Conshohocken Human Relations Commission shall be charged with the duty to provide public education, promote diversity and inclusion within the Borough, to act as a liaison to community groups and civic organizations and to serve, generally, as a community resource regarding diversity, anti-discrimination, and equality of opportunity in all aspects of the common welfare of the Borough.

G. The Conshohocken Human Relations Commission shall operate within the scope of funds which may be allocated, on an annual basis, by the Borough Council and shall not exceed the annual allocation in any year, except upon prior approval by Borough Council. In adopting this Ordinance, Council hereby expresses its intention that the operation of the Conshohocken Human Relations Commission under this Ordinance shall be supported by volunteers, unpaid staff, and volunteer efforts and shall be as close to "zero-cost" to the Borough as reasonably feasible.

SECTION VII Complaint and Procedures for filing Complaints

1. Complaints

A. Any person claiming to be aggrieved by a practice which is made unlawful under this Ordinance may make, sign and file a verified complaint, as provided under paragraph B of this Ordinance, alleging violations of this Ordinance. Such complaint shall, at a minimum, contain the following information:

- i. The name, telephone number, mailing address and email (if applicable) of the aggrieved person(s);
- ii. The name, telephone number, mailing address and email (if applicable) of the person(s) alleged to have committed the prohibited practice;
- iii. A concise statement of the facts, including pertinent dates, time, locations, people, and acts involved constituting the alleged discriminatory practice;
- iv. If applicable, the address and a description of the dwelling unit involved in the matter complained of;
- v. Such other information as may be required by the Commission.

B. Complaints may be filed in person at the office of the Borough Manager, or by mailing such complaints to the Borough offices, to the attention of the Borough Manager or the Chairperson of the Human Relations Commission. All such complaints must be received by the Borough within one hundred eighty (180) days of the occurrence of the last act giving rise to the complaint or such complaint shall be dismissed as untimely.

C. The Borough Manager shall transmit all complaints received to the Chairperson of the Commission not later than ten (10) days of receipt of the complaint. The Borough Manager shall conspicuously mark the face of the complaint with the date the document was first received in the Borough offices.

D. The Commission may promulgate forms for use by persons wishing to file a complaint, however, complaints which are prepared without the use of an approved form shall be deemed acceptable under this Ordinance so long as the facts set forth under paragraph "A" of this Section can be clearly determined from the document submitted as a complaint.

E. The Commission may provide for a process by which persons seeking to file a complaint may consult with a volunteer or other staff person affiliated with the Commission who is trained to assist the prospective complainant in discerning the facts relevant to the prospective complaint. Such process shall also include referral of additional information to the prospective complainant concerning the content of this Ordinance, the content of the Pennsylvania Human Relations Act, and the availability of the Pennsylvania Human Relations Commission as an additional venue within which the prospective complainant may seek redress when possible.

2. Notifications and Answer

A. Within thirty (30) days of receipt of a complaint, the Commission shall:

- i. Send a copy of the complaint to the person(s) charged with a discriminatory act or practice under this Ordinance (the "respondent"), together with a copy of this Ordinance.
- ii. Send a notice to the complainant, informing them that the complaint has been accepted and processed by the Commission. If the complaint alleges discrimination on a basis proscribed under federal or state law, the Notice shall also inform the complainant of their right to file a complaint with the Pennsylvania Human Relations Commission or the federal Equal Employment Opportunity Commission as well as the U.S. Department of Housing and Urban Development, where applicable.
- iii. The Commission shall notify the Pennsylvania Human Relations Commission of the filing of any complaint that may be deemed to be within the jurisdiction of that Commission, as required under the Human Relations Act.
- iv. The Commission shall also include a notice to both the complainant and the respondent(s) of their option to elect to proceed to voluntary mediation in order to resolve the matters giving rise to the complaint.

B. The respondent(s) shall file a written verified answer to the complaint within thirty (30) days of service of the complaint. An answer shall be filed in the same manner as a complaint.

3. Mediation and Fact Finding

A. Within thirty (30) days of receipt of an answer to a complaint, or, where no answer is filed, within sixty (60) days of service of the complaint upon the respondent(s), the Commission shall proceed in accordance with the following options:

- i. In the event that both parties have consented to mediation, under paragraph 2(A)(iv) of this Section, then the Commission shall refer the matter to a recognized alternative dispute resolution service, which same service may be provided through Montgomery County, the Montgomery County Bar Association, or any other professional mediation service provider, or may refer the matter to a licensed member of the Pennsylvania bar, who may be willing to perform service to the Commission as a volunteer mediator. Any costs or expenses which may be associated with the mediation shall be the responsibility of the parties. The parties shall jointly select the mediator, however, the Commission shall retain the authority to select a volunteer mediator in the event the parties have agreed to mediation but cannot jointly agree on a mediator. Mediation sessions shall remain private and not otherwise subject to public attendance.
- ii. In the event that the parties have not jointly agreed to submit the complaint to mediation, then the Commission shall schedule a fact finding conference before a member of the Commission appointed by the Chairperson, at which conference the parties shall be encouraged to present any and all evidence, documents, or other information which they deem relevant to the complaint. The fact finding conference shall be an investigative proceeding, not subject to public participation, and no formal record or transcript of the conference shall be made. The Commissioner presiding over the fact finding conference shall, in addition to considering the relevant evidence presented at the conference, explore the possibility that the parties may reach an amicable resolution to the underlying issues, and shall encourage an amicable settlement of the complaint where possible. The Commissioner presiding over the conference shall have discretion to schedule additional conference sessions if the interests of justice or the investigative process demand additional time and/or attention be devoted to the matter subject to the conference.

B. The parties shall notify the Commission whether the mediation or fact finding conference, whichever shall have occurred, resulted in an amicable resolution of the complaint. In the event the complaint is resolved, the Commission shall notify the parties that the complaint has been dismissed, and shall record the result of the mediation or fact finding conference in the Notice of dismissal.

C. In the event that the complaint has not been resolved through mediation, the Notice of dismissal shall include a statement that the person aggrieved has a right to pursue the matter in the Court of Common Pleas, the Pennsylvania Human Relations Commission, the Equal Employment Opportunity Commission, or in any such other forum as may be provided under law.

D. In the event that the complaint has been submitted to a fact finding conference but has not been resolved, the Commissioner presiding over the conference

shall prepare a Conference Report containing findings of fact as well as a recommended conclusion as to whether the Commissioner finds probable cause that an unlawful discriminatory practice has occurred. The Conference Report shall be completed and circulated to the members of the Commission within thirty (30) days of the date of the last session of the fact finding conference.

E. Once completed, but in no event later than sixty (60) days from the final session of the fact finding conference, the Conference Report shall be considered at a meeting of the Human Relations Commission, at which time the Commission shall accept or reject the Conference Report by public vote. If the Conference Report is adopted by the Commission, the parties shall be sent Notice that the complaint is disposed of in accordance with the Conference Report and conclusion of the Commissioner, and that the person aggrieved has a right to pursue the matter in the Court of Common Pleas, the Pennsylvania Human Relations Commission, the Equal Employment Opportunity Commission, or in any such other forum as may be provided under law. A final adopted Conference Report which dismisses a complaint as unfounded or not otherwise indicative of an unlawful practice shall be deemed a public record under the Right to Know Law.

F. In the event that the Commission adopts a Conference Report that finds that probable cause exists to believe that an unlawful discriminatory practice has occurred, the Commission shall provide a copy of the final adopted Conference Report to the Conshohocken Police Department, for further investigation and disposition. In the event such a referral is made, the Conference Report shall remain an investigative document not subject to disclosure under the Right to Know Law.

SECTION VIII Private Right of Action and Non-limitation of Remedies

A. Any person aggrieved by a violation of this Ordinance shall have a right of action in the Court of Common Pleas of Montgomery County, or any other court of competent jurisdiction, and may recover such remedies for each violation as defined under the Pennsylvania Human Relations Act, and case law interpreting same.

B. The right of action created under this Ordinance may be brought: 1.) upon receipt by the aggrieved person of notice that the Commission has dismissed the complaint, or 2.) if no such notice is received, after one (1) year from the date of filing of the complaint. If the person aggrieved has received a notice that the Commission has dismissed the complaint, an action under this Ordinance must be brought by the aggrieved person within one (1) year from the date of receipt of such notice, or the action shall be barred as untimely. Equitable principles of waiver, estoppel, and/or tolling may be deemed to apply to the time limitations set forth hereunder.

C. Nothing under this Ordinance shall be deemed to limit the right of an aggrieved person to recover under any other applicable law or legal theory.

SECTION IX Multiple Filings

A. This Ordinance shall have no jurisdiction over matters which are the subject of pending or prior filings made by an aggrieved person before any state or federal court or agency of competent jurisdiction.

SECTION X Penalties

Any person who shall violate any provision of Section IV of this Ordinance, or who resists or interferes with any authorized representative of the Borough in the performance of their duties under this Ordinance shall, upon conviction thereof before a Magisterial District Judge, be guilty of a summary offense and sentenced to pay a fine of not less than \$500.00 nor more than \$1,000.00, plus costs, for each event giving rise to a violation under this Ordinance.

SECTION XI Severability

The terms, conditions and provisions of this Ordinance are hereby declared to be severable, and, should any portion, part or provision of this Ordinance be found by a court of competent jurisdiction to be invalid, unenforceable or unconstitutional, the Borough Council hereby declares its intent that the Ordinance shall have been enacted without regard to the invalid, unenforceable, or unconstitutional portion, part or provision of this Ordinance.

SECTION XII Repealer

Any and all other Ordinances or parts of Ordinances in conflict with the terms, conditions and provisions of this Ordinance are hereby repealed to the extent of such irreconcilable conflict.

SECTION XIII Effective Date

This Ordinance shall be effective ninety (90) days after enactment.

ORDAINED and **ENACTED** an Ordinance of the Borough of Conshohocken
this 20th day of April, 2011.

BOROUGH OF CONSHOHOCKEN

PAUL McCONNELL, COUNCIL PRESIDENT

ATTEST:

FRANCIS J. MARABELLA, BOROUGH SECRETARY

Examined and Approved by me this 20th day of April,
2011.

ROBERT FROST, MAYOR