

**ORDINANCE NO. 2019-962**

**AN ORDINANCE OF THE BOROUGH OF HUNTINGDON, HUNTINGDON COUNTY, PENNSYLVANIA, ADOPTING A NEW CHAPTER TO THE HUNTINGDON BOROUGH CODE TITLED "ANTI-DISCRIMINATION" WHICH PROHIBITS CERTAIN DISCRIMINATORY PRACTICES IN EMPLOYMENT, HOUSING AND PUBLIC ACCOMMODATION; ESTABLISHES A HUMAN RELATIONS COMMISSION FOR THE BOROUGH OF HUNTINGDON; ESTABLISHES PROCEDURES FOR FILING A COMPLAINT WITH THE HUMAN RELATIONS COMMISSION FOR AN ALLEGED UNLAWFUL DISCRIMINATORY ACT AND PROVIDES MEDIATION AND REMEDIES FOR VIOLATION OF THE ORDINANCE.**

WHEREAS, the population of the Borough of Huntingdon (the "Borough") consists of people possessing a number of different personal characteristics regarding their actual or perceived race, color, sex, religion, ancestry, genetic information, national origin, sexual orientation, gender identity or expression, familial status, marital status, age, veteran status, mental or physical disability, use of guide or support animals and/or mechanical aids; and

WHEREAS, the direct negative and secondary effects of discriminatory practices involving the personal characteristics described above in matters of employment, housing, and public accommodation in this country are well known and have been extensively studied and demonstrated; and

WHEREAS, the practice or policy of discrimination against such individuals or groups is a matter of public concern that threatens the rights and privileges of the inhabitants, guests and visitors of the Borough; and

WHEREAS, the Borough Council of the Borough of Huntingdon (the "Council") desires to establish and adopt an official policy of non-discrimination in the Borough in all matters involving employment, housing and use of public accommodations; and

WHEREAS, the Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744, as amended, 43 P.S. §951-963 (the "Act"), does not preclude the Borough from enacting and enforcing its own Anti-Discrimination Ordinance which prohibits additional categories of discrimination; and

WHEREAS, the Act specifically authorizes political subdivisions to establish a local Human Relations Commission which shall have the powers and duties similar to those executed by the Pennsylvania Human Relations Commission under the Act; and,

NOW, THEREFORE, BE IT ENACTED AND ORDAINED, that the Code of the Borough of Huntingdon shall be amended by adding a new Chapter titled "Anti-Discrimination," which shall provide as follows:

**Section 1. Purpose and Declaration of Policy.**

A. In order to ensure that all persons, regardless of actual or perceived race, color, sex, religion, ancestry, genetic information, national origin, sexual orientation, gender identity or

expression, familial status, marital status, age, veteran status, mental or physical disability, use of guide or support animals and/or mechanical aids enjoy the full benefits of citizenship and are afforded equal opportunities for employment, housing, and use of public accommodations, it is necessary that appropriate legislation be enacted.

B. It is hereby declared to be the public policy of the Borough of Huntingdon ("Borough") to foster the employment of all individuals in accordance with their fullest capacities regardless of actual or perceived race, color, sex, religion, ancestry, genetic information, national origin, sexual orientation, gender identity or expression, familial status, marital status, age, veteran status, mental or physical disability, use of guide or support animals and/or mechanical aids, and to safeguard their right to obtain and hold employment without such discrimination, to assure equal opportunities to all individuals and to safeguard their rights to public accommodation and to secure housing accommodation and commercial property without regard to actual or perceived race, color, sex, religion, ancestry, genetic information, national origin, sexual orientation, gender identity or expression, familial status, marital status, age, veteran status, mental or physical disability, use of guide or support animals and/or mechanical aids.

C. Nothing in this Chapter shall be construed as supporting or advocating any particular doctrine, position, point of view, lifestyle or religious view. To the contrary, it is the intention of this chapter that all persons be treated fairly and equally, and it is the express intent of this Chapter to guarantee fair and equal treatment under the law to all people of the Borough.

D. This Chapter shall be deemed an exercise of the police power of the Borough for the protection of the public welfare, prosperity, health and peace of the Huntingdon community.

## **Section 2. Definitions.**

The following words and phrases when used in this Chapter shall have the meanings given to them in this Section.

**BOROUGH:** The Borough of Huntingdon, County of Huntingdon, Commonwealth of Pennsylvania.

**BOROUGH COUNCIL:** The Borough Council of Huntingdon Borough.

**DISABILITY OR HANDICAP** — With respect to a person, means: 1) A physical or mental impairment which substantially limits one or more of such person's major life activities; 2) A record of having such an impairment; or 3) Being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance, as defined in Section 102 of the Controlled Substances Act (Public Law 91-513, 21 U.S.C. § 802).

**DISCRIMINATION:** Any discriminatory act(s) taken by any person, employer, employment agency, labor organization or public accommodation on the basis of actual or perceived race, color, sex, religion, ancestry, genetic information, national origin, sexual orientation, gender identity or expression, familial status, marital status, age, veteran status, mental or physical disability, use of guide or support animal and/or mechanical aids.

**DISCRIMINATORY ACTS:** All acts defined in Section 5 of the Pennsylvania Human Relations

Act, 43 P.S. §955, as unlawful discriminatory practices. The fact that the Pennsylvania Human Relations Act would not define a practice as unlawful when that practice is taken on the basis of actual or perceived sexual orientation, gender identity or expression, genetic information or marital status shall not exempt such practice from being considered a discriminatory act under this chapter.

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

EMPLOYER: Any person who employs four or more employees, including the Borough, its departments, boards and commissions, and any other government agency within its jurisdiction.

FRIVOLOUS CLAIM: A complaint where the complainant lacks any factual or legal basis for the alleged conduct in violation of this Ordinance and clearly lacks any probability of success on the merits.

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

GENDER VARIANT: A person whose gender identity or gender expression does not conform to socially defined male or female gender expectations.

GENETIC INFORMATION: That information which is defined as genetic information in the Genetic Information Nondiscrimination Act of 2008, 42 U.S.C.A. §2000ff.

ORDINANCE: This chapter, which shall also be known as the "Anti-Discrimination Ordinance."

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 other for-profit and nonprofit organizations.

PUBLIC ACCOMMODATION: Any accommodation, resort 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 Section 4(l) of the Pennsylvania Human Relations Act, 43 P.S. §954(l), but shall not include accommodations which are in their nature distinctly private.

SUPPORT ANIMAL — Animals that work, provide assistance, or perform tasks for the benefit of a person with a disability, or animals that provides emotional support that alleviates one or more identified symptoms or effects of a person's disability pursuant to the rules and regulations of the Pennsylvania Human Relations Act.

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

To the extent words and phrases appearing in this Chapter are not expressly defined herein, the meaning of this chapter shall be construed consistently with the Pennsylvania Human Relations Act.

### **Section 3. Unlawful Practices.**

A. Discrimination in housing, employment, and access to public accommodations is prohibited under this Chapter.

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

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

### **Section 4. Exceptions.**

A. The provisions of this Chapter shall not bar the following from giving preference to persons of the same religion or denomination or to members of the following from making such selection as is calculated by such organization to promote the religious principles or the aims, purposes or fraternal principles for which it is established or maintained:

- 1) Any religious or denominational institution; or
- 2) Any charitable or educational organization which is operated, supervised or controlled by or in connection with any religious organization; or
- 3) Any bona fide private or fraternal organization.

B. The provisions of this Chapter shall not make it an unlawful employment 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 sex where that is a qualification due to the group's beliefs and practices.

C. Local Limits on Maximum Occupancy of a Dwelling. Nothing in this ordinance shall limit the applicability of any local, state or federal or any reasonable private land use restrictions, condominium articles or by-laws regarding the maximum number of occupants permitted to occupy a dwelling.

D. Controlled Substances. Nothing in this ordinance with respect to housing shall prohibit conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance, as defined in Section 102 of the Controlled Substances Act (21 USC 802).

E. Owner-Occupied Dwellings. This ordinance shall not apply to owner-occupied

dwellings containing four units or less, providing the landlord occupies one of the units as his/her primary residence.

F. Subleasing a Dwelling Unit. This ordinance shall not apply to the subleasing of a dwelling unit where one or more of the tenants named on the lease in effect at the time of the subleasing will continue to reside in the unit.

G. Housing for Older Persons. This Chapter shall not apply to the following:

- 1) Housing for older persons which the Borough determines is specifically designed and operated to assist elderly persons as defined in a Federal, State or local program; or,
- 2) Housing intended for and solely occupied by persons 62 years of age or older; or,
- 3) Housing intended and operated for occupancy by at least one person 55 years of age or older per unit.

H. Nothing herein shall be construed to mean a landlord must rent to someone who does not have the ability to pay.

#### **Section 5. Establishment of Human Relations Commission.**

A. Pursuant to 43 P.S. §962.1 of the Pennsylvania Human Relations Act, there is hereby established a Human Relations Commission in and for Huntingdon Borough (hereinafter referred to as the Huntingdon Human Relations Commission or the "Commission").

B. The Commission shall consist of five members, who shall serve staggered terms of three years each, except that the initial members shall have a term of one year for one member, two years for two members and three years for two members, respectively. At all times there shall be an odd number of members. All members of the Commission shall be appointed by the Borough Council. Members shall be residents of the Borough or individuals who work full time within the Borough. No voting member of the Commission shall hold any office in any political party. Members of the Commission shall serve without salary but may be paid expenses incurred in the performance of their duties, as approved by the Borough Council.

C. One of the Commission's members shall be appointed as Chairperson of the Commission by Borough Council. The Chairperson will be responsible for setting Commission meetings, coordinating with the Borough Manager regarding received complaints and answers, and generally ensuring that the duties of the Commission are fulfilled. The Chairperson may delegate responsibility for Commission duties to specific Commissioners or to paid staff, if applicable.

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 Huntingdon Human Relations Commission under this Chapter, 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. Borough Council hereby grants to the Commission all of the powers necessary to the execution of its duties (as set forth below).

F. The Commission shall operate within the scope of funds which may be annually allocated by the Borough Council and shall not exceed the annual allocation in any year, except upon prior approval by the Borough Council. It is the intention of the Borough Council that the Commission's actions shall be supported by volunteers and unpaid staff and shall be as close to "zero-cost" to the Borough as reasonably feasible.

## **Section 6. Complaint and Procedures for filing Complaints**

### **A. Filing a Complaint.**

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

a. The name, telephone number, mailing address and email (if applicable) of the aggrieved person(s);

b. The name, telephone number, mailing address and email (if applicable) of the person(s) alleged to have committed the prohibited practice;

c. The particulars of the complaint including pertinent dates, time, locations, people, and acts involved constituting the alleged discriminatory practice;

d. If applicable, the address and a description of the dwelling unit which is involved; and

e. Such other information as may be required by the Commission.

2) Complaints may be filed in person at the office of the Borough Manager or by mailing such complaints to the Borough office or to the Chairperson of the Human Relations Commission. All complaints must be received by the Borough office or by the Commission within 180 days of the alleged act(s) of discrimination giving rise to the complaint or such complaint shall be dismissed as untimely.

3) The Borough Manager shall convey the complaint to the Chairperson of the Human Relations Commission within ten (10) days of receipt of the complaint. A majority vote by the Commission may dismiss any complaint that it deems to be a frivolous complaint.

4) The Commission may promulgate forms for use by the 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.

5) 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 the 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.

**B. Notification and Answer.**

1) Within 30 days of its receipt of a complaint, the Commission shall:

a. Send a copy of the complaint to the person(s) charged with a discriminatory act or practice under this Ordinance (the "respondent(s)") together with a copy of this Ordinance.

b. Send a notice to the person(s) aggrieved, informing them that the complaint has been received and processed by the Commission. If the complaint alleges discrimination on a basis prescribed under federal or state law, the Notice sent to the person(s) aggrieved shall also inform them of the right to file with the Pennsylvania Human Relations Commission and/or with the federal Equal Employment Opportunity Commission as well as the U.S. Department of Housing and Urban Development where applicable.

c. 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.

d. 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.

2) The respondent(s) shall file a written verified answer to the complaint within 30 days of receipt of the complaint. The Commission, upon request of the respondent, may grant an extension of not more than 30 additional days. An answer to a complaint may be filed in the same manner as an original complaint. If the answer is filed with the Borough office, it shall be conveyed by the Borough Manager to the Chairperson of the Commission within 10 days of the Borough office's receipt thereof. The Commission shall promptly send a copy of the answer to the person(s) aggrieved.



### **C. Mediation**

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

a. In the event that both parties have consented to mediation then the commission shall refer the matter to a recognized alternative dispute resolution service, which same service may be provided through Huntingdon County, the Huntingdon 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 act as the mediator in the event the parties have agreed to mediation but cannot jointly agree on a mediator. Mediation sessions conducted by the Commission may proceed with a minimum of two (2) eligible Commission Members. Mediation sessions shall remain private and not otherwise subject to public attendance.

2) When mediation has resulted in an amicable resolution of the complaint and the complaint is resolved, the Commission shall notify the parties that the complaint has been dismissed, and shall record the result of the mediation in the Notice of dismissal.

3) In the event the complaint has not been resolved through mediation the parties are entitled to proceed to the Court of Common Pleas in Huntingdon County and/or the Pennsylvania Human Relations Commission if appropriate.

### **Section 8. Non-limitation of Remedies**

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

### **Section 9. Multiple Filings**

This Ordinance shall not apply to 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 10. 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, Huntingdon 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 12. Repealer

Any and all other Ordinances of 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 13. Penalties

Any person who shall violate any provision of Section 3 of this Ordinance may be subject by the Huntingdon County Court of Common Pleas or any Court of competent jurisdiction to the penalties enumerated in Sections 9(F.1) and (F.2), Sections 9.2, 9.3 and Sections 10 & 11 of the Pennsylvania Human Relations Act. The penalties contained in this ordinance shall mirror any future changes to the Pennsylvania Human Relations Act as adopted by the General Assembly and approved by the Governor. All penalties included in the Pennsylvania Human Relations Act shall be extended to include all protected classes enumerated in the Huntingdon Borough Human Relations Ordinance.

## Section 14. Effective Date

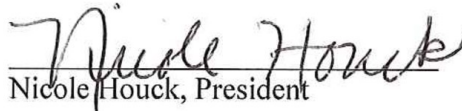
This Ordinance shall be effective ninety (90) days after enactment.

**ENACTED AND ORDAINED** At a meeting of the Borough Council of the Borough of Huntingdon held this 17<sup>TH</sup> day of December, 2019.

ATTEST:

BOROUGH OF HUNTINGDON

  
Richard King, Secretary

  
Nicole Houck, President

Approved this 17<sup>TH</sup> day of December, 2019.

  
David Wessels, Mayor