

## ETNA NON- DISCRIMINATION ORDINANCE

NO. [#####]

**AN ORDINANCE To Amend The Code Of The Etna, adding Chapter [## [ex: 93]], To Provide for the Creation of The Etna Human Relations Commission, and to Prohibit Discrimination in Housing, Commercial Property, Employment and Public Accommodations Based Upon Actual or Perceived Race, Color, National Origin, Ancestry, Religious Creed, Age, Sex, Sexual Orientation, Gender Identity, Gender Expression, Veteran's Status, Marital Status, Familial Status, Genetic Information, Handicap or Disability, Use of An Assistance Animal; Providing Definitions; And Providing Penalties**

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 equal protection under law, United States Constitution, Fourteenth Amendment; Constitution of the Commonwealth of Pennsylvania, Article I, §§26, 28.

WHEREAS, the Etna Borough Code authorizes Council to make and adopt ordinances that are consistent with the constitution and the laws of the Commonwealth that it deems necessary for the proper management, care, and control of the Borough and the maintenance of peace, good government, prosperity, health, and welfare of the Borough and its citizens.

WHEREAS, Section 12.1 (a) of the Pa. Human Relations Act authorizes the Etna Borough Council to establish a local Human Relations Commission

WHEREAS, Etna Borough prides itself on the diversity of its residents, and the harmonious relations which have been fostered in the Borough by a practiced and recognized attitude of respect for all residents, employees, and visitors within Etna Borough.

WHEREAS, the Etna Borough Council desires to establish and adopt an official policy of nondiscrimination in Etna, in matters involving employment, housing, commercial property, and public accommodations.

NOW, THEREFORE, the Council of Etna hereby ENACTS and ORDAINS the following:

**Section 1.** The Code of the Etna shall be amended by the addition of a new Chapter 93, Human Relations Commission, to provide as follows:

## Chapter 93

### Human Relations Commission

#### § 93.1 – Purpose and Declaration of Policy.

A. Foster the employment of all individuals in accordance with their fullest capacities regardless of actual or perceived race, color, national origin, ancestry, religious creed, age, sex, sexual orientation, gender identity, gender expression, veteran status, marital status, familial status, genetic information, handicap or disability, or use of an assistance animal to enjoy the full benefits of citizenship and to safeguard their right to obtain and hold employment without such discrimination;

1. To secure housing accommodation and commercial property without regard to actual or perceived race, color, national origin, ancestry, religious creed, age, sex, sexual orientation, gender identity, gender expression, veteran status, marital status, familial status, genetic information, handicap or disability, or use of an assistance animal to enjoy the full benefits of citizenship; and

2. To assure equal opportunities to all individuals and to safeguard their right to public accommodation without regard to actual or perceived race, color, national origin, ancestry, religious creed, sex, sexual orientation, gender identity, gender expression, veteran status, marital status, familial status, genetic information, handicap or disability, or use of an assistance to enjoy the full benefits of citizenship.

B. 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 Etna Borough.

C. This chapter shall be deemed an exercise of the police power of Etna Borough for the protection of the public peace, prosperity, health and welfare of its residents and the Etna community.

D. No power or duty granted hereunder to the Etna Human Relations Commission is intended to exceed, nor shall it be construed as exceeding, those powers and duties granted to the Pennsylvania Human Relations Commission by the Pennsylvania Human Relations Act.

## **§ 93.2 – Definitions.**

The following words and phrases when used in this chapter shall have the meanings given to them in this subsection. To the extent words and phrases appearing in this chapter are not expressly defined herein, their meaning for purposes of this chapter shall be the same as such words are defined in the Pennsylvania Human Relations Act and such words, if not therein defined, shall be construed consistently with the Pennsylvania Human Relations Act.

A. **BOROUGH COUNCIL** – The duly elected Council Members of Etna.

B. **DISCRIMINATION** – Any discriminatory act(s) taken by any person, employer, entity, employment agency, or labor organization, with respect to or involving a transaction related to employment, public accommodations, commercial property or housing accommodations, on the basis of a person's actual or perceived race, color, national origin, ancestry, religious creed, age, sex, sexual orientation, gender identity, gender expression, veteran's status, marital status, familial status, genetic information, handicap or disability, or use of an assistance animal.

C. **DISCRIMINATORY ACTS** – All acts or actions defined in the Pennsylvania Human Relations Act as unlawful discriminatory practices as related to employment, public accommodations, publicly offered commercial property or housing accommodations, when those acts or actions are taken on the basis of a person's actual or perceived race, color, national origin, ancestry, religious creed, age, sex, sexual orientation, gender identity, gender expression, veteran's status, marital status, familial status, genetic information, handicap or disability, or use of an assistance animal.

D. **EMPLOYER** – Any person, as defined in this section, including Etna Borough, its departments, boards and commissions, and any other government agency or school district within its jurisdiction, employing four or more individuals within the Borough, but does not include religious, fraternal, charitable or sectarian corporations or associations, except such corporations or associations supported, in whole or in part, by governmental appropriations. "Employer" excludes individuals acting in a supervisory capacity unless they are an owner of the entity employing the complainant.

E. **FAIR HOUSING ACT** – The Fair Housing Act, P.L. 90-284, 42 U.S.C. § 3601, *et seq.*, as amended.

F. GENDER EXPRESSION – The manner in which a person's gender identity is communicated to others, through appearance, dress, behavior, mannerisms, or other traits. An individual's physical characteristics, chromosomal sex, sex designated at birth, or engagement or lack thereof in gender affirming healthcare, has no bearing on an individual's Gender Expression.

G. GENDER IDENTITY – A person's identity as it relates to the gender spectra, regardless of physical characteristics, chromosomal sex, sex designated at birth, or engagement or lack thereof in gender affirming healthcare.

H. HOUSING ACCOMMODATIONS – Includes 1) any building, structure, mobile home site or facility, or portion thereof, which is used or occupied or is intended, arranged or designed to be used or occupied as the home residence or sleeping place of one or more individuals, groups or families, whether or not living independently of each other; and 2) any vacant land publicly offered for sale or lease for the purpose of constructing or locating thereon any such building, structure, mobile home site or facility. This provision shall not apply to the rental or leasing of a room or rooms in an owner-occupied, single-family residential property.

I. PENNSYLVANIA HUMAN RELATIONS ACT – The Pennsylvania Human Relations Act of 1955, P.L. 744, No. 222, 43 P.S. §§ 951-963, as amended.

J. PERSON – One or more individuals, partnerships, associations, organizations, corporations, limited liability entities, legal representatives, trustees in bankruptcy or receivers, including, but not limited to, any owner, lessor, assignor, builder, manager, broker, salesman, agent, employee, independent contractor, or lending institution.

K. PUBLIC ACCOMMODATION – Includes any business or activity which is open to, accepts or solicits the patronage of the general public or offers goods, services or recreation to the general public, as well as the definition of Public Accommodation, Resort, or Amusement, in the Pennsylvania Human Relations Act.

L. SEXUAL ORIENTATION – An individual's identified or perceived engagement in, or desire for, sexual, physical, or romantic relationships with a person of a particular sex, gender, gender identity, or gender expression.

M. BOROUGH – The Borough of Etna, County of Allegheny, Commonwealth of

Pennsylvania.

N. USE OF AN ASSISTANCE ANIMAL – The use of an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or that provides emotional support that alleviates one or more identified effects of a person’s disability, which includes use of guide or support animals because of the blindness, deafness or handicap or disability of the user or because the user is a handler or trainer of support or guide animals. An assistance animal is not a pet.

**§ 93.3 – Unlawful Practices.**

A. Discrimination in housing accommodations, publicly offered commercial property transactions, employment or public accommodations is prohibited under this chapter.

B. It is unlawful for any person to retaliate against any individual because such individual has opposed any practice forbidden by this chapter, or because such individual 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. It is unlawful for any person to aid, abet, incite, compel or coerce 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.

**§ 93.4 – Exceptions.**

A. Nothing contained herein 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 directly connected with carrying on of its religious activities.

B. Nothing contained herein shall bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes which is operated, supervised or controlled by or in connection with a religious organization, from limiting admission to or giving preference to persons of the same religion or denomination with regard to the occupancy, leasing, sale or purchase of any housing accommodation.

C. An employer shall not be prevented from enforcing a dress code which is reasonably related to the business or profession being conducted, provided that employees are allowed to follow the dress code required of others with the same gender identity or gender expression.

**§ 93.5 – Establishment of Human Relations Commission.**

A. Pursuant to § 12.1 (a) of the Pennsylvania Human Relations Act, codified at 23 Pa. Cons. Stat. § 962.1, hereby establishes a Human Relations Commission in and for Etna Borough (hereinafter referred to as the "Etna Human Relations Commission" or the "Commission").

B. The Commission shall consist of five members, of the inaugural members, two shall serve three year terms, two shall serve two year terms, one shall serve a one year term. Thereafter, members shall serve terms of three years each. All members of the Commission shall be appointed by the Borough Council. Members shall be residents of Etna, or own a business or property in Etna. Members of the Commission shall serve without compensation with respect to any and all duties performed under this chapter but may be reimbursed reasonable expenses incurred in the performance of their duties, as approved by the Borough Council. Members shall not hold office in any political party. On the expiration of a term, a reappointment may be made for a new three-year term commencing at the end of the completed term.

C. One of the Commission's members shall be appointed by the members thereof as Chairperson. The Chairperson will be responsible for setting Commission meetings, coordinating with the Borough Manager regarding receiving complaints and answers, and generally ensuring that the duties of the Commission are fulfilled. The Chairperson will coordinate with the PA Human Relations Commission and Governor's Director of LGBT issues for trainings around LGBT issues and mediation technique for commissioners. The Chairperson may delegate responsibility for Commission duties to specific Commissioners.

D. The Commission shall have jurisdiction over Unlawful Discriminatory Practices committed within the Borough.

E. 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 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, or the Chairperson's designee on the Commission, and shall be performed in conjunction with the state Human Relations Commission.

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

G. The Etna Borough Council hereby grants to the Commission, with respect to Unlawful Practices as defined herein, all of the powers necessary to the execution of its duties authorized by the Pennsylvania Human Relations Act and as set forth below.

H. The Commission shall be empowered to promulgate additional regulations as it determines to be necessary or desirable to implement the intent of this chapter subject to review and approval of the Borough Council.

I. The Commission shall have the additional following powers:

(1) Promote mutual understanding, respect and cooperation among all racial, cultural, religious, ethnic, nationality and other groups within the Borough; and

(2) Cooperate with and assist other organizations, public or private, to improve relationships among the citizens of the Borough; and

(3) Conduct educational programs for furtherance of the improvement of human relations in the Borough; and

(4) Act as a referral group related to complaints of alleged discrimination within the Borough and, wherever possible, the Commission shall refer the complainants to appropriate social, civic or government agencies for further action; and

(5) The Commission may itself independently authorize the initiation of complaints of Unlawful Practices, as set forth in this Article; and

(6) Execute the regulations for and actions of the Commission as set forth in § 93.6, below.

### **§ 93.6 – Procedures**

#### **A. Filing a complaint.**

(1) Any person(s) claiming to be aggrieved by an Unlawful Practice may make, sign and file a complaint alleging violation(s) of this chapter, which shall include the following information:

(a) The name and address of the aggrieved person(s); and

(b) The name and address of the person(s) alleged to have committed the prohibited practice; and

(c) Particularity of the case, a statement of the facts, including pertinent dates, constituting the alleged Unlawful Practice; and

(d) If applicable, the address and a description of any Housing Accommodation, commercial property, employer or public accommodation that is involved; and

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

(2) Complaints may be filed in person or by mail at the Borough's office. All complaints must be received by the Borough Manager's office within 180 days from the alleged Unlawful Practice or, for an ongoing Unlawful Practice 180 days of the last date the alleged Practice occurred, or the complaint will not be considered timely. The time limits for filing any complaint or other pleading under this act shall be subject to waiver, estoppel and equitable tolling.

(3) A staff person at the Etna Borough Office shall record the date and time of receiving the complaint and shall within 10 days forward a complete copy to the Chairperson of the Etna Human Relations Commission.



(4) The Commission may, on its own motion, independently initiate a complaint for a violation of the Unlawful Practices.

(a) Whenever the Commission has information whereby it has reason to believe that an unlawful discriminatory practice has occurred, the Commission may, on its own motion, file a complaint.

(b) Commission-initiated complaints shall be filed in accordance with this Section, with the name and address of the complainant being the Commission, and signed by the Chairperson of the Commission or the Chairperson's designee on behalf of the Commission.

(c) When the allegation alleges a violation that comes under the jurisdiction of the PA Human Relations Commission, The Etna Human Relations Commission will assist The Complainant to immediately dual file their allegation with the PA Human Relations Commission.

#### B. Notification and answer.

(1) Within 30 days of its receipt of a complaint, the Commission shall determine if it has jurisdiction hereunder to process the complaint. If the Commission determines that it does not have such jurisdiction, it shall dismiss the complaint and notify the aggrieved party. If the Commission determines it has jurisdiction over the complaint, it shall proceed as follows:

(a) Send a copy of the complaint to the person(s) charged with an Unlawful Practice (the "Respondent") and to the Pennsylvania Human Relations Commission; and

(b) Send a notice to the person(s) aggrieved (the "Complainant"), informing them that the complaint has been received.

(c) If the complaint alleges discrimination on a basis proscribed under federal law, the notice to the Complainant shall also provide information of a possible right to file with the Federal Equal Employment Opportunity Commission and inform the Complainant

how to do so.

(2) The Respondent shall file with the Borough Office a written answer to the complaint within 30 days of service of the complaint. The answer shall be conveyed by the Borough Office to the Chairperson of the Etna Human Relations Commission within 10 days of its receipt by the Borough Office. The Commission shall promptly send a copy of the answer to the Complainant.

(3) At any time after the filing of a complaint, the Commission shall dismiss with prejudice a complaint which, in its opinion is untimely with no grounds for equitable tolling, outside its jurisdiction or frivolous on its face.

### C. Mediation.

(1) The Commission shall provide mediation and meeting facilitation at no charge to complainants and respondents who are willing to mediate a resolution of a complaint.

(2) After the answer has been received, the Commission shall, within 30 days, invite the parties to voluntarily participate in the mediation of their dispute. The parties shall respond to the invitation to mediate within 30 days of being invited to mediate. Mediation shall be conducted in accordance with regulations promulgated by the Commission and approved by the Borough Council.

(3) The Chairperson of the Commission shall select a mediator, who may be either a member of the Commission or a volunteer from the community.

(4) The parties shall notify the Commission as to whether the mediation successfully resolved the complaint. Mediation proceedings shall otherwise be confidential. Nothing learned in mediation can be independently used in further proceedings of the complaint. Neither the results thereof nor any record made in connection therewith shall be made public unless agreed to in writing by both parties to the dispute.

(5) Dismissal of the Complaint Following Mediation.

(a) If the mediation has successfully resolved the complaint,

the Commission shall promptly notify the parties that it has dismissed the complaint.

(b) If the mediation has not successfully resolved the complaint, and if the complaint alleges a violation of this Ordinance which is also proscribed under the Pennsylvania Human Relations Act, the Commission shall notify the parties that the complaint has been dismissed, and refer the complaint to the Pennsylvania Human Relations Commission for further proceedings.

(c) If the mediation has not successfully resolved the complaint, and only if the complaint alleges a violation of this Chapter which is not otherwise proscribed under the Pennsylvania Human Relations Act, The Commission shall advise the Complainant of their right to proceed to Common Pleas Court when the PA Human Relations Commission does not have jurisdiction. Actions under this subsection shall be filed within two years after the date of notice from the Etna Commission closing the complaint.

#### D. Reports.

The Commission shall keep records of its meetings and activities. The Commission shall provide advisory reports to Etna Borough Council as needed or requested.

#### E. Remedies.

In the event that a Complainant brings an action in the Common Pleas Court, the Common Pleas Court shall have the power to award the remedies that are provided in Section 9(f), 9(f.1) and (f.2) and Section 12(c)(3) of the Pennsylvania Human Relations Act.

### **§ 93.7 – Private Right of Action.**

Having exhausted the administrative remedies set forth herein, an aggrieved person shall have the right to pursue any rights or causes of action at law or in equity to which such person may be entitled.

**Section 2.** Nothing in this Ordinance shall be construed to affect any suit or proceedings in any Court, any rights acquired or liability incurred, any permit issued, or any cause or causes of action existing under the Borough's Code of Ordinances prior

to the adoption of this amendment.

**Section 3.** The provisions of this Ordinance are severable, and if any section, sentence, clause, part, or provision thereof shall be held illegal, invalid, or unconstitutional by any Court of competent jurisdiction, such decision of this court shall not affect or impair the remaining sections, sentences, clauses, parts or provisions of this ordinance. It is hereby declared to be the intent of the Board that this ordinance would have been adopted if such illegal, invalid, or unconstitutional section, sentence, clause, part or provision had not been included herein.

**Section 4.** This Ordinance shall take effect and be in force from and after its approval date as required by law.

Approved by the Etna Borough Council this \_\_\_\_ day of \_\_\_\_\_, 2020.

Borough Council of Etna Borough

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Peter Ramage, President

ATTEST:

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Mary Ellen Ramage, Secretary-Manager