

ARTICLE XVII
Administrative Boards and Commissions

§ 3-54. Shade Tree Commission.

There is hereby recognized the existence of a Shade Tree Commission whose powers and duties are contained in Chapter 100 of the Whitemarsh Township Code.

§ 3-55. Zoning Hearing Board.

There is hereby recognized the existence of a Zoning Hearing Board whose powers and duties are in accordance with applicable state and municipal law.

§ 3-55.1. Human Relations Commission. [Added 11-17-2011 by Ord. No. 911]

- A. Short title. This section shall be known as the "Whitemarsh Township Human Relations Ordinance."
- B. Purpose and declaration of policy.
- (1) Whitemarsh Township finds that it is of high public importance to adopt appropriate legislation to insure that all persons, regardless of actual or perceived race, color, religious creed, ancestry, sex, national origin, handicap, use of guide or support animals because of blindness, deafness or physical handicap of the user or the user is a handler or trainer of support or guide animals, or sexual orientation, gender identity or gender expression, enjoy the full benefits of citizenship and are afforded equal opportunities for employment, housing and public accommodation.
 - (2) The Board of Supervisors of Whitemarsh Township hereby declares it to be the public policy of the Township to foster equality and equal opportunity for all citizens, regardless of actual or perceived race, color, religious creed, ancestry, sex, national origin, handicap or use of guide or support animals because of blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals, or because of an individual's sexual orientation, gender identity or gender expression in all matters affecting employment, housing and commercial property 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.
 - (3) Nothing in this section 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 section that all persons be treated fairly and equally, and that all persons in Whitemarsh Township shall be guaranteed fair and equal treatment under law.
 - (4) This section shall be deemed an exercise of the police power of the Township of Whitemarsh, as provided under the Pennsylvania Second Class Township Code, and as set forth in the Whitemarsh Township Home Rule Charter, for the protection of the public welfare, prosperity, health and peace of the community of Whitemarsh Township.

C. Definitions.

- (1) The following words and phrases, when appearing in this section, shall have the meanings given to them under this subsection.

BOARD OF SUPERVISORS — The Board of Supervisors of the Township of Whitemarsh, Montgomery County.

COMMERCIAL PROPERTY OR HOUSING — The opportunity for an individual to obtain any commercial property or housing accommodation for which he is qualified.

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, on the basis of a person's actual or perceived race, color, religious creed, ancestry, sex, national origin, handicap or use of guide or support animals because of blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals, or because of an individual's sexual orientation, gender identity or gender expression.

DISCRIMINATORY ACTS — All acts or actions defined in the Pennsylvania Human Relations Act¹ as unlawful discriminatory practices as related to employment, public accommodations, publicly offered commercial property or housing accommodations, actual or perceived race, color, religious creed, ancestry, sex, national origin, handicap or use of guide or support animals because of blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals, or because of an individual's sexual orientation, gender identity or gender expression.

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 Township, its departments, boards and commissions, and any other government agency within the jurisdiction of the Township, save those of any government agency whose laws may be deemed preemptive of this section.

EMPLOYMENT — The opportunity for an individual to obtain employment for which he is qualified.

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.

ORDINANCE — This section, which shall be referred to as the "Whitemarsh Township Human Relations 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 Township, its departments, boards and

1. Editor's Note: See 43 P.S. § 951 et seq.

commissions, and any other for-profit and nonprofit organization.

PUBLIC ACCOMMODATION — The opportunity for an individual to access food, beverages or lodging, resort or amusement which is open to, accepts or solicits the patronage of the general public, but shall not include any accommodations which are in their nature distinctly private.

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

TOWNSHIP — The Township of Whitemarsh, Montgomery County, Pennsylvania.

- (2) Any terms of this section not expressly defined herein shall be construed in a manner consistent with the Pennsylvania Human Relations Act.²

D. Unlawful practices.

- (1) Discrimination in employment, housing and commercial property or any public accommodation is prohibited under this section.
- (2) Retaliation against any individual because such person has opposed any practice forbidden by this section, or because such person has made a charge, testified, or assisted in any manner in any investigation or proceeding under this section is prohibited under this section.
- (3) Aiding, abetting, inciting, compelling or coercing the doing of any act declared by this section to be an unlawful practice, or obstructing or preventing any person from complying with the provisions of this section is prohibited under this section.

E. Exceptions. Notwithstanding any other provision of this section, it shall not be an unlawful practice for a religious corporation or association to commit any of the acts as defined in Subsection D of this section.

F. Establishment of Human Relations Commission.

- (1) 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 Township of Whitemarsh, which shall be known as the "Whitemarsh Township Human Relations Commission."
- (2) The Whitemarsh Township Human Relations Commission shall consist of four members, who shall be appointed to terms of three years by the Board of Supervisors. The terms of the members of the Commission shall be staggered, such that the terms of 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 Township of Whitemarsh and shall serve without compensation.
- (3) The Chairperson of the Commission will designate one member as needed to receive the complaint and conduct an intake meeting with the complainants. The member charged with this duty shall not participate in any mediations involving parties to the

2. Editor's Note: See 43 P.S. § 951 et seq.

complaint for which they handled the intake nor shall this member vote on complaints brought in front of the Commission.

- (4) The Human Relations Commission 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 section. The Chairperson shall also report, from time to time, to the President of the Board of Supervisors regarding the activities of the Commission.
- (5) 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 Whitemarsh Township Human Relations Commission under this section, as well as the terms, conditions and provisions of the Pennsylvania Human Relations Act,³ 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.
- (6) The Whitemarsh Township Human Relations Commission shall have all of those powers necessary to execute the duties set forth under this section, provided that such powers shall not exceed those exercised by the Pennsylvania Human Relations Commission under the Pennsylvania Human Relations Act.
- (7) The Whitemarsh Township Human Relations Commission shall operate within the scope of funds which may be allocated, on an annual basis, by the Board of Supervisors and shall not exceed the annual allocation in any year, except upon prior approval by the Board of Supervisors. In adopting this section, the Board of Supervisors hereby expresses its intention that the operation of the Whitemarsh Township Human Relations Commission under this section shall be supported by volunteers, unpaid staff, and volunteer efforts and shall be as close to "zero-cost" to the Township as reasonably feasible.

G. Complaints and procedures for filing complaints.

(1) Complaints.

- (a) Any person claiming to be aggrieved by a practice which is made unlawful under this section may make, sign and file a verified complaint, as provided under Subsection G(1)(b) of this section, alleging violations of this section. Such complaint shall, at a minimum, contain the following information:

[1] The name, telephone number, mailing address and e-mail (if applicable) of the aggrieved person(s);

[2] The name, telephone number, mailing address and e-mail (if applicable) of the person(s) alleged to have committed the prohibited practice;

[3] A concise statement of the facts, including pertinent dates, time, locations,

3. Editor's Note: See 43 P.S. § 951 et seq.

people, and acts involved constituting the alleged discriminatory practice;

[4] Such other information as may be required by the Commission.

- (b) Complaints may be filed in person at the office of the Township Manager, or by mailing such complaints to the Township offices, to the attention of the Township Manager or the member of the Commission designated to handle intake. All such complaints must be received by the Township within 180 days of the occurrence of the last act giving rise to the complaint, or such complaint shall be dismissed as untimely.
 - (c) The Township Manager shall transmit all complaints received to the Chairperson of the Commission not later than 10 days of receipt of the complaint. The Township Manager shall conspicuously mark the face of the complaint with the date the document was first received in the Township 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 section so long as the facts set forth under Subsection G(1)(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 section, the content of the Pennsylvania Human Relations Act,⁴ 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 30 days of receipt of a complaint, the Commission shall:
 - [1] Send a copy of the complaint to the person(s) charged with a discriminatory act or practice under this section (the "respondent"), together with a copy of this section.
 - [2] 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 his or her right to file a complaint with the Pennsylvania Human Relations Commission or the federal Equal Employment Opportunity Commission as well as the United States Department of Housing and Urban Development, where applicable.
 - [3] The Commission shall notify the Pennsylvania Human Relations Commission

4. Editor's Note: See 43 P.S. § 951 et seq.

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.

[4] 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 30 days of service of the complaint. An answer shall be filed in the same manner as a complaint.

(3) Mediation.

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

[1] In the event that both parties have consented to mediation, under Subsection G(2)(a)[4] 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 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 eligible Commission members. Mediation sessions shall remain private and not otherwise subject to public attendance.

(b) 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.

(c) In the event the complaint has not been resolved through mediation before the Whitemarsh Township Human Relations Commission, or through the procedures of the Pennsylvania Human Relations Commission, the parties are entitled to proceed to the Court of Common Pleas of Montgomery County. In order to preserve the right to proceed to the Court of Common Pleas of Montgomery County and assert violations of the Pennsylvania Human Relations Act,⁵ the complainant is required to file the complaint with both the Whitemarsh Township Human Relations Commission and the Pennsylvania Human Relations Commission. **[Amended 8-17-2017 by Ord. No. 977]**

5. Editor's Note: See 43 P.S. § 951 et seq.

- H. Nonlimitation of remedies. Nothing contained in this section shall be deemed to limit the right of an aggrieved person to recover under any other applicable law or legal theory.
- I. Multiple filings. This section 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.
- J. Penalties. Any person who shall violate any provision of Subsection D of this section may be subject by the Montgomery County Court of Common Pleas or any court of competent jurisdiction to the penalties enumerated in Section 9(f)(1 and 2), Sections 9.2, 9.3, and Sections 10 and 11 of the Pennsylvania Human Relations Act.⁶ The penalties contained in this section shall mirror any future changes to the Pennsylvania Human Relations Act as adopted by the General Assembly and approved by the Governor.
 - (1) This section extends the protections of the Pennsylvania Human Relations Act to include actual or perceived sexual orientation, gender identity or gender expression.
 - (2) All penalties included in the Pennsylvania Human Relations Act shall be extended to include all protected classes enumerated in the Whitemarsh Township Human Relations Ordinance.

6. Editor's Note: See 43 P.S. § 951 et seq.