

**AN ORDINANCE TO AMEND THE CODE OF ORDINANCES OF THE CITY OF SMYRNA, GEORGIA, BY ADOPTING A NEW ARTICLE 2, “UNLAWFUL DISCRIMINATION” IN CHAPTER 66, “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 THE CITY OF SMYRNA, GEORGIA that the Code of Ordinances of the City of Smyrna shall be amended as follows:

**PART I:**

A new Article II titled “Unlawful Discrimination” shall be created in Chapter 66, “Offenses and Miscellaneous Provisions”, which shall read as follows:

**ARTICLE II – UNLAWFUL DISCRIMINATION**

**Sec. 66-40 - Purpose and Intent.** It is the purpose and intent of the Smyrna City Council to protect and safeguard the right and opportunity of all persons to be free from all forms of discrimination, including discrimination based on race, color, religion, national origin, sex, sexual orientation, gender, gender identity, homeless status, disability, marital status, veteran/military status or as a result of the person being 40 years of age or older. The 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 Smyrna. It is important for the City to ensure that all persons within the City have equal access to employment, housing, and public accommodations.

**Sec. 66-41 - Civil Rights Declared.** The right of an otherwise qualified person to be free from discrimination because of that person's actual or perceived race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, homeless status, age, disability, marital status, familial status, or veteran/military status is recognized as and declared to be a civil right. This right shall include, but not be limited to, all 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 be served or receive service at retail establishments without discrimination.
- (4) The right to engage in property transactions, including obtaining housing for rental or sale and credit therefor, without discrimination.
- (5) The right to exercise any right granted under this article without suffering coercion or retaliation.

**Sec. 66-42 - Definitions.** For the purposes of this ordinance, the following terms shall have the following meanings:

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- (1) **BUSINESS.** Any person or entity conducting business within the city, which is required to obtain a license or permit.
- (2) **DISCRIMINATE, DISCRIMINATION OR DISCRIMINATORY.** Any act, policy or practice that, intentionally subjects any person to differential negative treatment as a result of that person's actual or perceived race, color, religion, national origin, sex, sexual orientation, gender, gender identity, homeless status, disability, marital status, veteran/military status or as a result of the person being 40 years of age or older.
- (3) **EMPLOYEE.** Any individual employed by or seeking employment from an employer, excluding any individual employed by his or her parents, spouse, or child.
- (4) **EMPLOYER.** A person who employs one or more employees in the City of Smyrna, or any agent of such person.
- (5) **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.
- (6) **INITIAL CONCILIATOR.** An individual appointed by the mayor and city council who is a competent attorney at law in good standing with the state bar association with training and experience in the area of constitutional law and employment discrimination. This person shall serve at the pleasure of the mayor and City Council.
- (7) **MARITAL STATUS.** An individual's past, current, or prospective status as single, married, domestically partnered, in a civil union, divorced, or widowed.
- (8) **NATIONAL ORIGIN.** An individual's, or an individual's ancestor's, place of origin.
- (9) **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.
- (10) **RESPONDENT.** means the person or business alleged to have violated this article
- (11) **RELIGION.** All aspects of religious belief, observance, and practice.
- (12) **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, under any circumstances.
- (13) **SEXUAL ORIENTATION.** Homosexuality, heterosexuality, or bisexuality.
- (14) **VETERAN/MILITARY STATUS.** An individual's status as one who serves or served in the uniformed services, military, naval or air service, and who was discharged or released under conditions other than dishonorable.

**Sec. 66-43- Discrimination Prohibited.** No person, Business or entity shall, within a Place of Public Resort, Accommodation, Assemblage or Amusement, Discriminate or engage in Discrimination or Discriminatory activities.

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**Sec. 66-44-Interference with Declared Civil Rights Prohibited.** No person, Business or entity shall, intentionally engage in any act, policy or practice that negatively interferes with any of the Civil Rights declared in Section 66-41 herein.

**Sec. 66-45- Penalty.** Upon conviction, violators of this ordinance shall be subject to a maximum fine of \$1,000.

**Sec. 66-46 - Exceptions.** Notwithstanding the foregoing, the following are not discriminatory practices prohibited by this ordinance:

- (1) A religious organization that engages an individual to perform work connected with the performance of religious activities.
- (2) Public or private schools operating within all applicable provisions of the Federal Civil Rights Act and the Americans with Disabilities Act, and acting pursuant to their established charters, rules, policies, guidelines or religious tenets, to the extent such acts are protected by the United States Constitution or any other federal law.
- (3) An Employer or Business that observes the conditions of a bona fide affirmative action plan or a bona fide seniority system which is not a pretext to evade the purposes of this ordinance.
- (4) An Employer or Business that refuses to hire personnel that in its sole but reasonable discretion it deems to be unqualified for the position.
- (5) An Employer or Business requiring an Employee, during the Employee's hours at work, to adhere to dress or grooming standards, deemed appropriate by the Employer in its sole but reasonable discretion.
- (6) A private club or other enterprise not open to the public, limiting the services or amenities that it provides to its members or from giving preference to its members.

**Sec. 66-47- Exemptions.** Nothing in this ordinance shall:

- (1) Require any individual, business, club, institution, or membership organization to take action in violation of the associational rights granted by the Constitutions of the United States and the State of Georgia.
- (2) Be construed to prevent children's clubs, institutions or membership organizations from restricting non-commercial accommodations, advantages, facilities, membership, and privileges to persons of the same sex, if such sex restriction is fundamental to the nature or purpose of the club, institution, or membership organization.
- (3) Be construed to prohibit treating disabled persons more favorably than non-disabled persons or to prohibit treating senior citizens more favorably than non-senior citizens.
- (4) Be construed to prohibit offering discounts, special prices, or other special arrangements to children or families.

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- (5) Be construed to prohibit imposing age limits up to 21.
- (6) Prohibit a religious organization from limiting its non-commercial accommodations, advantages, facilities, membership, and privileges to persons of the same religion.

**Sec. 66-48- Physical Changes to property.** This ordinance shall not require anyone to make physical changes to any property that would not otherwise be legally required to be made.

**Sec. 66-49 - Enforcement.** Prior to formal prosecution and subject to procedures developed by the City of Smyrna, the City shall receive and shall initiate, and seek to conciliate, complaints alleging violations of this ordinance.

- (1) Any person aggrieved by a potential violation of this ordinance may file a complaint with the Municipal Court Clerk on a form to be provided by the city. 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. This fee may be waived by a showing of indigency according to the guidelines for indigency established by the Smyrna Municipal Court.
- (2) The Municipal Court Clerk shall cause a copy of the complaint to be forwarded to the Initial conciliator within three (3) business days of receipt of properly filed complaint, via hand delivery or electronic mail. The Initial conciliator shall be a competent attorney at law of good standing in his/her profession and have experience in the area of constitutional law and employment discrimination.
- (3) The Initial conciliator shall review the complaint and answer, if any, to determine if the complaint is in conformity with the requirements of this ordinance or demonstrates facts sufficient to invoke jurisdiction as set forth in this ordinance. Should the Initial conciliator determine that the complaint does not meet the requirements of this ordinance, or is facially frivolous, or is based upon facts insufficient to invoke the jurisdiction as set forth in this ordinance, he/she may dismiss the complaint, however the reasons for dismissal must be specified in a written report from the Initial Conciliator.
- (4) Upon determination that the complaint should not be dismissed, the Initial Conciliator shall promptly attempt to negotiate a conciliatory resolution of the complaint and shall schedule a conference attempting to reconcile the dispute. The complaining party and Respondent shall be given written notice of the location, time and date of the conference at least fifteen (15) days in advance of the scheduled time. The Initial Conciliator shall have the discretion to reschedule the conference upon the request of either party. Any conference hereunder shall be conducted in accordance with the procedures to be established by the Initial Conciliator.
- (5) The case shall be dismissed should the complainant not attend or refuse to participate in the conference.

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- (6) If, within ten (10) business days of the conclusion of conference, the complaining party notifies the City Clerk in writing that he or she is dissatisfied with the results, or if the Respondent does not participate in the conference, the Initial Conciliator shall refer the matter to the Smyrna Municipal Court to go through the standard process for prosecuting alleged ordinance violations.

**Sec. 66-50 - Other Remedies.** This ordinance may not be construed to limit any other remedies available under local, state, or federal law.

**Sec. 66-51- No Private Claim Created.** This ordinance does not create a private right of action.

**PART II**

**SEVERABILITY** - 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 judgement 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.

This ordinance shall take effect on September 15, 2020 and is passed and duly adopted this 3rd day of August, 2020.

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The Honorable Derek Norton  
Mayor, City of Smyrna, Georgia

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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Heather Peacon-Corn  
City Clerk, City of Smyrna, Georgia

Approved as to form: \_\_\_\_\_

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Scott A. Cochran, City Attorney

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