

UPPER MERION TOWNSHIP
MONTGOMERY COUNTY, PENNSYLVANIA

ORDINANCE NO. 2012-808

AN ORDINANCE AMENDING THE CODE OF UPPER MERION TOWNSHIP PART II ENTITLED "GENERAL LEGISLATION" CHAPTER 101 ARTICLE ONE TO ADD SECTION 101 TO READ "HUMAN RELATIONS COMMISSION" AND TO ADD THE FOLLOWING SUBSECTIONS: 100-1. "PURPOSE; DECLARATION OF POLICY", 100-2 "DEFINITIONS", 100-3 "UNLAWFUL PRACTICES", 100-4 "EXCEPTIONS", 100-5 "ESTABLISHMENT OF HUMAN RELATIONS COMMISSION; MEMBERSHIP; POWERS AND DUTIES", 100-6 "COMPLAINT PROCEDURES" 100-7 TO READ "PRIVATE RIGHT OF ACTION" FOR THE PURPOSE OF ESTABLISHING THE RULES AND REGULATIONS FOR THE UPPER MERION TOWNSHIP HUMAN RELATIONS COMMISSION

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 Second Class Township Code authorizes the Board of Supervisors 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 Township and the maintenance of peace, good government, health and welfare of the Township and its citizens.

WHEREAS, Upper Merion Township prides itself on the diversity of its residents, and the harmonious relations which have been fostered in Upper Merion Township by a practiced and recognized attitude of respect for all residents of Upper Merion Township;

WHEREAS, the Board of Supervisors desires to establish and adopt an official policy of nondiscrimination in Upper Merion Township, in all matters involving employment, housing and public accommodation;

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Board of Supervisors for the Township of Upper Merion and it is hereby ordained and enacted by the authority of the same, to wit:

§1 CODE AMENDMENTS.

- A. THE CODE OF UPPER MERION TOWNSHIP PART II ENTITLED "GENERAL LEGISLATION" CHAPTER 101 ARTICLE ONE IS HEREBY AMENDED TO READ AS FOLLOWS:

ARTICLE I

RULES AND REGULATIONS

§100-1. Purpose; declaration of policy.

- A. In order to ensure that all persons, regardless of a person's sexual orientation, gender identity or gender expression, enjoy the full benefits of citizenship and are afforded equal opportunities for employment, housing, commercial property, and the use of public accommodations, it is necessary that appropriate legislation be enacted.
- B. It is hereby declared to be the public policy of Upper Merion Township to foster the employment of all individuals in accordance with their fullest capacities regardless of a person's sexual orientation, gender identity or gender expression.
- C. It is the intention of this ordinance 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 Township.
- D. This chapter shall be deemed an exercise of the police power of Upper Merion Township for the protection of the public welfare, prosperity, health and peace of the Township, its residents and the Upper Merion Township community.

§100-2. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section. To the extent words and phrases appearing in this chapter are not expressly defined herein, their meanings 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.

BOARD OF SUPERVISORS

The duly elected Board of Supervisors of Upper Merion Township.

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 sexual orientation, gender identity or gender expression.

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 sexual orientation, gender identity or gender expression.

EMPLOYER

The term "employer" with respect to discriminatory practices includes people, corporations, organizations and associations employing four or more persons within the Township. The term "employer" excludes persons acting in a supervisory capacity unless they are an owner of the entity employing the complainant.

GENDER EXPRESSION

The manner in which a person's gender identity is communicated to others, through appearance, behavior, or physical characteristics that may be in accord with, or opposed to, one's physical anatomy, chromosomal sex, or sex at birth, and shall include, but is not limited to, persons who are undergoing or have completed sex change.

GENDER IDENTITY

The gender(s), or lack thereof, a person self-identifies as, whether or not based on biological fact.

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. The term "housing accommodation" shall not include any personal residence offered for accommodation by the owner or lessee thereof or by his or her broker, salesperson, agent or employee.

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, lending institution and the Commonwealth of Pennsylvania, and all political subdivisions, authorities, boards and commissions.

PUBLIC ACCOMMODATION

Any accommodation for the provision of 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 Upper Merion, County of Montgomery, Commonwealth of Pennsylvania.

§100-3. Unlawful practices.

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

§100-4. Exceptions.

Notwithstanding any other provision of this chapter, it shall not be an unlawful practice for a religious corporation, organization or association, not supported in whole or in part by governmental appropriations, to refuse to hire, employ, house or otherwise accommodate an individual on the basis of actual or perceived sexual orientation, gender identity or gender expression, nor shall an employer be prevented from enforcing a dress code which is reasonably related to the business or profession being conducted.

§100-5. Establishment of Human Relations Commission; membership; powers and duties.

- A. Pursuant to § 12.1 of the Pennsylvania Human Relations Act, there is hereby established a Human Relations Commission in and for the Township of Upper Merion (hereinafter referred to as the "Upper Merion Township Human Relations Commission" or the "Commission").
- B. The Commission shall consist of five members who shall serve overlapping terms of five years each. All members of the Commission shall be appointed by the Board of Supervisors. Members shall be residents of Upper Merion Township. No member of

the Commission shall hold any office in any political party. 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 Board of Supervisors. Each member when initially appointed, will have a term of one, two, three, four or five years. The terms will be arranged in such a manner that all future terms will be in five year increments with one member of the board up for appointment each year.

- 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 Township 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.
- D. The Commission shall have jurisdiction over unlawful practices committed within the Township of Upper Merion.
- E. The Board of Supervisors hereby grants to the Commission, with respect to unlawful practices as defined herein, all of the powers necessary to the execution of its duties as set forth below.
- F. The Commission shall be empowered to promulgate such additional procedures to those set forth herein as it determines to be necessary or desirable to implement the intent of this chapter subject to review and approval of the Board of Supervisors.
- G. The business of the Commission will be conducted consistent with the Roberts Rules of Order unless the Commission adopts its own rules of order, in which event the specific rules of order will override.

§100-6. Complaint procedures.

A. Filing a complaint.

- (1) Any person(s) claiming to be aggrieved by an unlawful practice may make, sign and file a verified complaint alleging violations of this chapter, which shall include the following information:
 - (a) The name and address of the aggrieved person(s);
 - (b) The name and address of the person(s) alleged to have committed the prohibited practice;
 - (c) A concise statement of the facts, including pertinent dates, constituting the alleged unlawful practice;
 - (d) If applicable, the address and a description of any housing accommodation or commercial property which 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 Township Manager's office. All complaints must be received by the Township Manager's office within 180 days of the alleged unlawful practice, or the complaint will not be considered timely.
- (3) The Township Manager shall record the date and time of receiving the complaint and shall immediately forward a complete copy to the Chairperson of the Upper Merion Township Human Relations Commission.

B. Notification and answer.

- (1) Within 30 days of its receipt of a complaint, the Human Relations Commission shall determine if it has jurisdiction hereunder to hear 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 to hear the complaint, it shall proceed as follows:
 - (a) Send a copy of the complaint to the person(s) charged with a unlawful practice (the "respondent"); and
 - (b) Send a notice to the person(s) aggrieved (the "complainant"), informing him/her that the complaint has been received.
- (2) The respondent shall file with the Township Manager a written verified answer to the complaint within 30 days of the respondent's receipt of the complaint from the Township. It shall be conveyed by the Township Manager to the Chairperson of the Upper Merion Township Human Relations Commission within 10 days of its receipt by the Township Manager. The Commission shall promptly send a copy of the answer to the complainant.

C. Mediation.

- (1) After the answer has been received, the Commission shall, within 15 days, invite the parties to voluntarily participate in the mediation of their dispute. The parties shall respond to the invitation to mediate within 15 days of being invited to mediate. Mediation shall be conducted in accordance with procedures promulgated by the Commission.
- (2) If mediation is elected by the parties, the parties may jointly select a mediator, in which case they shall be jointly responsible for all financial costs and expenses associated with mediation and may allocate the costs of mediation as they agree. If the parties do not jointly select a mediator, or agree to allocation of costs pursuant to approved procedures of the Commission, the Chairperson of the Commission shall select a mediator, who may be either a member of the Commission or a volunteer from the community.

(3) The parties shall notify the Commission as to whether the mediation successfully resolved the complaint. Mediation proceedings shall otherwise be confidential. 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.

(4) 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.

D. 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 and over which the Pennsylvania Human Relations Commission does not have jurisdiction, the Commission shall proceed as follows:

(1) Investigation. The Commission shall, in a timely fashion, investigate the allegations of an unlawful practice set forth in the complaint by designating an investigator, who may be a member of the Commission. The Commission may, in the conduct of such investigation, issue subpoenas to any person charged with an unlawful practice commanding such person to furnish information, records or other documents, as necessary to assist in the Commission's investigation.

(2) Finding of no cause. If it shall be determined after the Commission's investigation that there is no probable cause for the allegations of the complaint, the Commission shall cause to be issued and served upon the parties written notice of such determination and dismissal of the complaint. This notice shall inform the person aggrieved that he/she has the right to pursue the matter in court.

(3) Conciliation. If the Commission, after investigation, determines that probable cause exists for the allegations of the complaint, the Commission shall immediately endeavor to eliminate the unlawful practice complained of by persuasion, conference and conciliation. If it determines that conciliation may be a useful approach, the Commission shall designate one of its members as a conciliator, who shall undertake conciliation following approved procedures of the Commission.

(4) Public hearing.

(a) If the Commission finds it is not possible to eliminate the unlawful practice by persuasion, conference and conciliation, the Commission shall cause to be issued and served a written notice scheduling a public hearing before the Commission at a time and place to be specified in such notice.

(b) The Commission may designate one or more of its members to preside at such a public hearing or it may, at its election, conduct such hearing en banc. Any Commission member who acted as a mediator, investigator or conciliator shall not

participate in such public hearing except as a witness to present the results of the investigation.

- (c) At the public hearing, both the complainant and the respondent shall be given the opportunity to appear, with or without counsel, to provide testimony and submit evidence. Formal rules of evidence shall not apply, but irrelevant or unduly repetitious evidence may be excluded by the Commission in its discretion. In addition, both the complainant and the respondent may introduce the testimony of additional witnesses and may submit documentary evidence.
 - (d) At the public hearing, the Commission shall be represented by the Township Solicitor. A court reporter shall make a formal record of the proceedings.
- (5) Findings and award. If, upon all the evidence at the hearing, the Commission shall find that a respondent has engaged in or is engaging in any unlawful practice as defined in this chapter, the Commission shall state its findings of fact and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful practice and to take such affirmative action, including, but not limited to: compensation for loss of work in matters involving the unlawful practice, hiring, reinstatement or upgrading of employees, with or without back pay, admission or restoration to membership in any respondent labor organization, the making of reasonable accommodations, or selling or leasing specified housing accommodations or publicly offered commercial property upon such equal terms and conditions as was available to other persons at the time of the unlawful practice, and any other verifiable, reasonable out-of-pocket expenses caused by such unlawful discriminatory practice. Back pay liability shall not accrue from a date more than three years prior to the filing of a complaint charging violations of this chapter.
- (6) Civil penalties. The Commission's order may also assess a civil penalty against the respondent in an amount not exceeding \$10,000 with respect to all matters alleged in the complaint.
- (7) Attorneys' fees.
- (a) If, upon consideration of all the evidence at the public hearing the Commission finds that a respondent has engaged in or is engaging in any unlawful practice, the Commission may award reasonable attorneys' fees and costs to the prevailing complainant. Such attorneys' fees and costs may include reasonable time for representation before the Commission at the public hearing under this chapter but shall not include time incurred in the filing of the complaint or appearances before the Commission or mediator in the mediation or conciliation process.
 - (b) If, upon all the evidence at the hearing, the Commission finds that a respondent has not engaged in or is not engaging in any unlawful practice and that the

complaint was brought in bad faith, the Commission may award attorneys' fees and costs to the prevailing respondent.

- (8) In the event that a claim proceeds to court, the same rights and remedies shall be available.
- (9) Finding of no discrimination. If upon all the evidence the Commission shall find that a respondent has not engaged in any unlawful discriminatory act, the Commission shall state its findings of fact and shall issue and cause to be served on the parties an order dismissing the complaint as to such respondent.
- (10) Appeal. Any order of the Commission may be appealed to the Court of Common Pleas of Montgomery County within 30 days of its date as provided by law.
- (11) Enforcement. When the Commission has heard and decided any complaint brought before it, enforcement of its order shall be initiated by the filing of a petition in court, together with a transcript of the record of the hearing before the Commission, and issuance and service of a copy of said petition as in proceedings in equity.

§100-7. 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.

§2. REPEALER.

All ordinances or parts of ordinances inconsistent herewith or in conflict with any of the specific terms enacted hereby, to the extent of said inconsistencies or conflicts, are hereby specifically repealed.

§3. REVISIONS.

The Upper Merion Township Board of Supervisors does hereby reserve the right, from time to time, to adopt modifications of, supplements to, or amendments of its ordinance, including this provision.

§4. SEVERABILITY.

In the event that any section, sentence, clause, phrase or word of this ordinance shall be declared illegal, invalid or unconstitutional by any Court of competent jurisdiction, such declaration shall not prevent, preclude or otherwise foreclose enforcement of any of the remaining portions of this Ordinance.

§5. EFFECTIVE DATE.

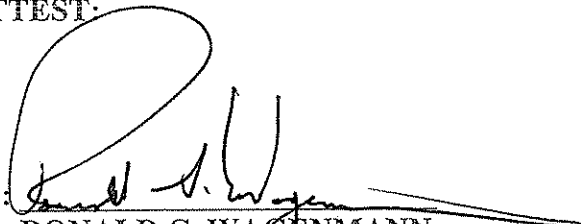
This amendment shall become effective five (5) days after date of adoption.

§6. FAILURE TO ENFORCE NOT A WAIVER.

The failure of Upper Merion Township to enforce any provision of this ordinance shall not constitute a waiver by Upper Merion Township of its rights of future enforcement hereunder.

ENACTED and ORDAINED by the Board of Supervisors of Upper Merion Township,
Montgomery County, Pennsylvania, this 18th day of October, 2012.

ATTEST:

By: 
RONALD G. WAGENMANN
SECRETARY-TREASURER/
TOWNSHIP MANAGER

UPPER MERION TOWNSHIP
BOARD OF SUPERVISORS

By: 
ERIKA SPOTT, CHAIRPERSON

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- Ordinance advertised in The Mercury on: October 18, 2012
 - Proof of Publication dated: October 11, 2012
 - Hearing Held on: October 18, 2012
 - Ordinance Adopted as Ordinance No. 2012- 808 on: October 18, 2012
 - Ordinance Entered as Ordinance No. 2012- 808 on: October 23, 2012
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