

ORDINANCE 4 - 2016

OF THE BOROUGH OF DICKSON CITY AN ORDINANCE ADOPTING A COMPREHESIVE
HUMAN RELATIONS COMMISSION FOR THE BOROUGH OF DICKSON CITY REGARDING,
INTER ALIA, EMPLOYMENT, HOUSING AND PUBLIC ACCOMMODATIONS INCLUDING
PROCEDURES FOR REDRESS OF VIOLATIONS

BE IT ORDAINED AND ENACTED, AND IT IS HEREBY ORDAINED AND
ENACTED BY THE COUNCIL OF THE BOROUGH OF DICKSON CITY AS
FOLLOWS:

SECTION 1. HUMAN RELATIONS COMMISSION

SECTION 2.. PURPOSE AND DECLARATION OF POLICY

1. 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, 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 the use of public accommodations, it is necessary that appropriate legislation be enacted.

2. It is hereby declared to be the public policy of the Council of the Borough of Dickson 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, mental or physical disability, use of guide or support animals and/or mechanical aids 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, mental or physical disability, use of guide or support animals and/or mechanical aids.

3. Nothing in this ordinance 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 ordinance that all persons be treated fairly and equally, and it is the express intent of this ordinance to guarantee fair and equal treatment under the law to all people of the Borough of Dickson City.

4. This ordinance shall be deemed an exercise of the police power of the Borough of Dickson City for the protection of the public welfare, prosperity, health and peace of the Borough of Dickson City and the Borough community and under authority of the Pennsylvania Human Relations Act, Borough Code and other acts having jurisdiction.

SECTION 3. DEFINITIONS:

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

1. BOROUGH: The Borough of Dickson City, County of Lackawanna, Commonwealth of Pennsylvania.
2. BOROUGH COUNCIL: The Borough Council of the Dickson City.
3. 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 (in housing only), marital status, age, mental or physical disability, use of guide or support animals and/or mechanical aids.
4. DISCRIMINATORY ACTS: All acts defined in the Pennsylvania Human Relations Act 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 ordinance to the extent not otherwise prohibited by law including but not limited to City of Pittsburgh Commission on Human Relations v. MacBeth, 37 Pa.Cmwth. 636, 391 A.2d 1109, 1110 (1978) and Riedel v. Human Relations Comm'n of City of Reading, 703 A.2d 1072, 1074 (Pa.Cmwth. 1997), rev'd, 559 Pa. 34, 739 A.2d 121 (1999).
5. 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 undergoing or have completed sex reassignment, are transgendered or gender variant.
6. EMPLOYEE. Employee does not include:
 - a. Any individual, as part of the employment, reside in the personal residence of the employer; or
 - b. any individual employed by said individuals parents, spouse or child;
 - c. those employed by religious, paternal, charitable or sectarian corporations or associations in the direct provision of services of the organization wherein membership is a bona fide occupational qualification, except such corporations or associations supported, in whole or in part, by Borough appropriation.
7. EMPLOYER: Any person who employs four or more employees, exclusive of parents, spouse or children of such person including the Borough of Dickson City, its departments, boards and commissions, and any other government agency within

its jurisdiction but excluding any religious, paternal charitable or sectarian organization in whole or in part by the Borough appropriation.

8. FAIR HOUSING ACT means Public Law 90-284, 42 U.S.C. §§ 3601 et. seq.

9. HOUSING FOR OLDER PERSONS. Housing for Older Persons means housing provided under any state or federal program that the Secretary of Housing and Urban Development determines is specifically designed and operated to assist elderly persons as defined in the state or federal program; or

- a. is intended for and solely occupied by persons sixty-two (62) years of age or older; or
- b. is intended and operated for occupancy by at least one person fifty-five (55) years of age or older per-unit.
 - (i) In determining whether housing qualified as housing older persons under this clause c., The Commission's requirement shall include not be limited to the following:
 - A. at least eighty (80%) percent of the units are occupied by at least one (1) person fifty-five (55) years of age or older per-unit; and
 - B. . The publication of, and adherence to, policies and procedures which demonstrate intent by the owner or manager to provide housing for persons fifty-five (55) years of age or older.
 - (ii) Housing shall not fail to meet the requirements for housing for older persons by reason of occupied units provided that such units are reserved for occupancy by persons who meet the age requirements of this clause c.

10. OWNER. Owner includes lessees, sub-lessees, as Sundays, manager, agent, or any other person having the right of ownership or possession were authority to sell, rent or lease any housing accommodations, including the Borough and its authorities boards and commissions.

10. PERSON: Any natural person, fraternal, civic or other membership organization, corporation, general or limited partnership, proprietorship, limited liability Company, or similar business organization legal representatives, trustee in bankruptcy or receivers. It also includes, but is not limited to, any owner, lessor, assignor, builder, manager, broker, salesperson, agent, employee, independent contractor and, including the Borough, its departments, boards and commissions, and other for-profit and nonprofit organizations.

11. 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(1) of the Pennsylvania Human Relations Act, 43 P.S. § 954(1) but shall not include any personal, professional services which are in their nature distinctly private, personal and confidential.

12. SEX. Sex means any male or female, and includes the gender of a person, as perceived, presumed or assumed by others.

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

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

SECTION 4. UNLAWFUL PRACTICES:

1. Discrimination in housing, employment, public accommodations or access to nonexempt educational institutions is prohibited under this ordinance.
2. Retaliation against any individual because such individual has opposed any practice forbidden by this ordinance, or because such individual has made a charge, testified or assisted in any manner in any investigation, proceeding or hearing under this ordinance is prohibited under this ordinance.
3. Aiding, abetting, inciting, compelling or coercing the doing of any act declared by this ordinance to be an unlawful practice, or obstructing or preventing any person from complying with the provisions of this ordinance is prohibited under this ordinance.

SECTION 5. EXCEPTION:

1. Notwithstanding any other provision of this ordinance, it shall not be an unlawful employment practice for a religious corporation or association, to refuse to hire or employ an individual on the basis of religion. Further nothing in this ordinance, regarding age, gender actual or perceived or familial status, shall apply with to housing for older persons any bona fide pension plan which have the effect of a minimum service requirement, or age limitations placed upon entry into bona fide apprentice programs as approved by the State Apprenticeship and Training Council of the Department of Labor and Industry. Nothing in this ordinance shall bar any institution or organization for persons with disabilities from limiting or giving preference in employment or membership to handicap or disabled persons.

SECTION 6. ESTABLISHMENT OF HUMAN RELATIONS COMMISSION:

1. Pursuant to 43 P.S. § 962.1 of the Pennsylvania Human Relations Act, there is hereby established a Human Relations Commission in and for the Borough of Dickson city (hereinafter referred to as the "Borough of Dickson City Human Relations Commission" or the "Commission").
2. The Borough of Dickson City Human Relations Commission shall consist of no fewer than five members, who shall serve overlapping terms of three years each. At all times there shall be an odd number of members. All members of the Commission shall be appointed by the Borough Council. Members of the Borough of Dickson City Human Relations Commission shall serve without salary but may be paid expenses incurred in the performance of their duties, as approved by Borough Council. No such member shall hold office in any political party. Paid staff may be hired, as approved by City Council, to assist in the performance of the duties of the Commission.

3. One of the Commission's members shall be appointed as the 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.

4. Borough Council hereby grants to Borough of Dickson City Human Relations Commission all of the powers necessary to the execution of its duties (as set forth below), provided that those powers shall not exceed those exercised by the Pennsylvania Human Relations Commission under the Pennsylvania Human Relations Act.

SECTION 7. PROCEDURES: EXPANDED PROCEDURES:

1. Filing a complaint.

a. Any person(s) claiming to be aggrieved by an unlawful practice may make, sign and file a verified complaint alleging violations of this Ordinance, which shall include the following information:

1. The name and address of the aggrieved person(s);
2. The name and address of the person(s) alleged to have committed the prohibited practice;
3. A concise statement of the facts, including pertinent dates, constituting the alleged discriminatory practice;
4. If applicable, the address and a description of the dwelling unit which is involved; and
5. Such other information as may be required by the Borough of Dickson City Human Relations Commission.

b. Complaints may be filed in person at the Borough Manager's office or by mailing such complaints to the Borough Manager's office or to the Chairperson of the Borough of Dickson City Human Relations Commission in care of the Borough Administrative Office 901 Boulevard Ave, Dickson City, Pa. All complaints must be received by the Borough Managers office or by the Dickson City Human Relations Commission within 180 days of the alleged act of discrimination to be considered timely.

c. The Borough Manager's office shall convey all original complaints received by that office to the Chairperson Borough of Dickson City Human Relations Commission within ten (10) days of the office's receipt of such complaints.

d. The Dickson City Human Relations Commission shall notify the Pennsylvania Human Relations Commission of complaints received involving discriminatory acts within that Commission's jurisdiction.

2. Notification and answer.

a. Within 30 days of its receipt of a complaint, the Borough of Dickson City Human Relations Commission shall:

1. Send a copy of the complaint to the person(s) charged with a discriminatory practice [the "respondent(s)"]; and
2. Send a notice to the person(s) aggrieved, informing them that the complaint has been received. 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 state Human Relations Commission and/or with the federal Equal Employment Opportunity Commission. Failure to provide such notice does not create liability upon the part of the Commission, Borough or its Officers or agents

b. The respondent(s) shall file a written verified answer to the complaint within 60 days of receipt of the complaint. An answer to a complaint may be filed in the same manner as an original complaint. If the answer is filed with the Borough Manager's office, it shall be conveyed by the Borough Manager to the Chairperson of the Borough of Dickson City Human Relations Commission within 10 days of the Borough Manager's office's receipt thereof. The Commission shall promptly send a copy of the answer to the person(s) aggrieved.

3. Fact finding conference.

a. After the answer has been received, the Commission shall, within 60 days, invite the parties to voluntarily participate in a fact finding conference concerning the dispute. The parties shall respond to the invitation to participate in a fact finding conference within 30 days of being invited to participate.

b. If the parties agree to participate in a fact finding conference, the parties shall meet with a Commission member at a location mutually agreeable to the parties within 30 days of the agreement to participate. Each party will be invited at the fact finding conference to present evidence and documents relevant to the complaint. The fact finding conference will not be a public event, and no record of the conference will be created, excepting the findings of fact detailed in Subsection 3.c.

c. The parties shall notify the Commission of whether the fact finding conference resulted in a resolution of the complaint. In the event the complaint is resolved, the Commission shall notify the parties that the complaint has been dismissed. In the event the complaint is not resolved through the fact finding conference, then the Commissioner, within 30 days, shall prepare findings of fact and a conclusion as to whether the Commissioner finds probable cause that an unlawful practice has occurred.

4. Disposition of the complaint.

Provided the Commission has not elected under Subsection 5 of this section to use expanded procedures, and if the complaint is not resolved through the fact finding conference, the Commission shall, at the second Commission meeting following the fact finding conference, consider the findings prepared by the Commissioner who conducted the fact finding conference. The Commission shall accept or reject the findings by public vote. The Commission shall provide the parties with the findings of fact and conclusion, shall

notify the parties of the outcome of the vote, and this notice shall also indicate that the person aggrieved has a right to pursue the matter in court by filing a lawsuit.

5. Option of the Commission to elect for expanded procedures.

The Commission shall have the authority to elect to adopt expanded procedures as set forth in Subsections 6 through 12 of this section subject to approval by the Borough of Dickson City Council and appropriation of funding for such procedures. A majority of Commission members must vote in favor of adopting expanded procedures in order for such procedures to be adopted. In the event that such procedures are adopted, they must, while in effect, be applied to all complaints that are not resolved through a fact finding conference. If the Commission has adopted expanded procedures, it may also, by majority vote and in its sole discretion, eliminate such procedures.

6. Expanded procedures: dismissal or nondismissal of the complaint.

If the fact finding conference was successful in resolving the complaint, the Commission shall follow the procedures set forth in Subsection 3.c. of this section for dismissing the complaint. If the fact finding conference was not successful in resolving the complaint, the Commission shall not dismiss the complaint but shall instead undertake the procedures set out in Subsections 7 through 12 of this section.

7. Expanded procedures: investigation.

The Commission shall, in a timely fashion, investigate the allegations of discrimination set forth in the complaint. The Commission may, in the conduct of such investigation, issue subpoenas to any person charged with an unlawful practice to furnish information, records or other documents, or to give sworn testimony, as necessary to assist in its investigation.

8. Expanded procedures: finding of no cause.

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

9. Expanded procedures: 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.

10. Expanded procedures: public hearing.

a. If the Commission, in its discretion, finds it is not possible to eliminate the unlawful practices by persuasion, conference or conciliation, the Commission shall cause to be issued and served a written notice, together with a copy of the complaint, which informs the respondent that the respondent must answer the charges of such complaint at a 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 hearing or it may, at its election, conduct such hearing en bane.

c. At the public hearing, the case in support of the complaint shall be presented to the Commission by pro bono counsel, pro se, or by Commission staff if any. The case in support of the complaint may instead be presented by the complainant's attorney, if the complainant is represented. Both the complainant and the respondent may appear at the hearing with or without counsel and provide testimony. In addition, both the complainant and the respondent may introduce the testimony of additional witnesses and may submit documentary evidence. The Commission and the parties shall not be bound by the strict rules of evidence at the hearing.

e. When notice of a hearing is given as set forth in subsection a. above and in election procedure is required by Fair Housing Act, either party may elect, as alternative to a public hearing before the commission, to have the claims asserted in the complaint sided civil action brought under the original jurisdiction of the Lackawanna County Court Pleas. Commission shall send written notice to all parties want them of their right to take civil action. In election must be made within twenty (20) days after service of the notice of the hearing. Party making the election shall notify the commission and all of the parties. The complaint has the right to intervene as a part of in County Court pursuant to such an election. If an election for civil action is made by either party, the Commission, or the complaint if the Commission does not elect to file, may within 30 days of the election, commence and maintain a civil action on behalf of the complaint, or in the case of the complaint by him or herself.

11. Expanded procedures: findings.

If upon all the evidence at the hearing the Commission shall find that a respondent has engaged in or is engaging in any unlawful discriminatory practice as defined in this ordinance, 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 discriminatory practice and to take such additional action as the Commission deems appropriate. The Commission shall have the authority to order any remedies available to the Pennsylvania Human Relations Commission under the Pennsylvania Human Relations Act, as allowed by law.

12. Expanded procedures: finding of no discrimination.

If upon all the evidence the Commission shall find that a respondent has not engaged in any unlawful discriminatory practice, 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.

SECTION 8. PRIVATE RIGHT OF ACTION AND NONLIMITATION OF REMEDIES:

1. Any person(s) aggrieved by a violation of this Ordinance shall have a private right of action in the Lackawanna County Court of Common Pleas or any other court of competent jurisdiction and may recover for each violation the following remedies:

- a. Back pay, front pay and other actual damages, as those remedies are defined in the Pennsylvania Human Relations Act and case law interpreting the same;
- b. Emotional distress damages;
- c. Exemplary damages;

- d. Reasonable attorney's fees and court costs to the prevailing party, other than against the Commission, Borough or their officers and agents; and
- e. Such other relief, including injunctive relief, as the court may deem appropriate.

2. The right of action created by this Ordinance may be brought upon receipt by the aggrieved person(s) of notice that the Commission has dismissed the complaint or, if no such notice is received, after one year from the date of the filing of the complaint. If the person aggrieved has received notice that the Commission has dismissed the complaint, an action under this Ordinance must be brought by the aggrieved person within one year from the date of receipt of said notice or it will be barred.

3. Nothing in this Ordinance limits the right of an aggrieved person to recover under any other applicable law or legal theory.

SECTION 9. REPEALER:

All Ordinances or parts of Ordinances which are inconsistent herewith are hereby repealed.

SECTION 10. SEVERABILITY:

If any sentence, clause, section, or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionally, illegally, or invalidity shall not effect or impair any of the remaining provisions, sentences, clause, sections or parts of this Ordinance. It is hereby declared as the intent of the Borough of Dickson City that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof had not been included thereof.


SECTION 11. EFFECTIVE DATE:

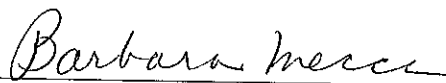
This Ordinance shall become effective January 10, 2017.

Ordained and passed into law this 14th day of June, 2016.

ATTEST:

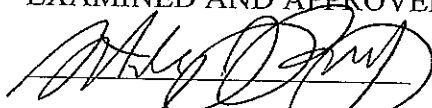
BOROUGH OF DICKSON CITY


Donna Sosik, Secretary

BY: 
Barbara Mecca
President of Council

[SEAL]

EXAMINED AND APPROVED this 14 day of June, 2016


Stanley Prushinski, Mayor