

FILE OF COUNCIL

Presented in Council on August 11, 2016

NO. 10 of 2016

AN ORDINANCE

OF THE CITY OF WILKES-BARRE, PENNSYLVANIA AMENDING CHAPTER 14 OF THE CODE OF ORDINANCES OF THE CITY OF WILKES-BARRE ENTITLED "HUMAN RELATIONS" BY REPEALING IT IN ITS ENTIRETY AND REPLACING IT WITH A NEW CHAPTER.

NOW, THEREFORE, IT IS HEREBY ORDERED AND ENACTED BY THE CITY COUNCIL OF THE CITY OF WILKES-BARRE THAT CHAPTER 14 ENTITLED "HUMAN RELATIONS" IS HEREBY REPEALED AND REPLACED AS FOLLOWS:

CHAPTER 14. HUMAN RELATIONS COMMISSION; DISCRIMINATION

Sec. 14-1. Purpose; policy.

- A. 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 and to have equal access to postsecondary educational institutions, it is necessary that appropriate legislation be enacted.
- B. It is hereby declared to be the public policy of the City Council of the City of Wilkes-Barre to foster 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, and to have equal access to postsecondary educational institutions 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.

- C. Nothing in this chapter 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 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 the City of Wilkes-Barre.
- D. This chapter shall be deemed an exercise of the police power of the City of Wilkes-Barre for the protection of the public welfare, prosperity, health and peace of the City and the Wilkes-Barre City community.

Sec. 14-2. Definitions; word usage.

- A. The following words and phrases, when used in this chapter, shall have the meanings given to them in this section:

CITY

The City of Wilkes-Barre, County of Luzerne, Commonwealth of Pennsylvania.

CITY COUNCIL

The City Council of the City of Wilkes-Barre.

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, marital status, age, mental or physical disability, use of guide or support animals and/or mechanical aids.

DISCRIMINATORY ACTS

All acts defined in the Pennsylvania Human Relations Act (*43 P.S. Sect. 951 et seq.*) 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 chapter.

EMPLOYER

Any person who employs one or more employees, including the City of Wilkes-Barre, its departments, boards and commissions, and any other government agency within its jurisdiction.

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.

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 City of Wilkes-Barre, its departments, boards and commission, and other for-profit and nonprofit organizations.

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 the Pennsylvania Human Relations Act (*43 P.S. Sect. 954*).

SEXUAL ORIENTATION

Actual or perceived homosexuality, heterosexuality and/or bisexuality.

- B. To the extent words and phrases appearing in this chapter are not expressly defined herein, the meanings in this chapter shall be construed consistently with the Pennsylvania Human Relations Act.

Sec. 14-3. Unlawful practices.

- A. Discrimination in housing, employment, public accommodations or access to educational institutions 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.

Sec. 14-4. Exceptions.

Notwithstanding any other provision of this chapter, it shall not be an unlawful employment practice for a religious corporation or association, not supported in whole or in part by governmental appropriations, to refuse to hire or employ an individual on the basis of religion.

Sec. 14-5. Establishment of Human Relations Commission.

- A. 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 City of Wilkes-Barre (hereinafter referred to as the “Wilkes-Barre City Human Relations Commission” or the “Commission”).
- B. The Wilkes-Barre City Human Relations Commission shall consist of no fewer than seven and no more than 15 members, who shall serve overlapping terms of three (3) years each. At all times, there shall be an odd number of members. All members of the Commission shall be appointed by the City Council. The Commission may elect up to three (3) nonvoting, ex officio members to broaden the diversity that serves on the Commission. Members shall be residents of the City or individuals who work full-time within the City of Wilkes-Barre. No voting member of the Wilkes-Barre City Human Relations Commission shall hold any office in any political party. Members of the Wilkes-Barre City Human Relations Commission shall serve without salary but may be paid expenses incurred in the performance of their duties, as approved by City Council. Paid staff may be hired, as approved by City Council, to assist in the performance of the duties of the Commission.
- C. One (1) of the Commission’s members shall be appointed as the Chairperson of the Commission by City Council. The Chairperson will be responsible for setting Commission meetings, coordinating with the Wilkes-Barre City Clerk’s Office 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.
- D. City Council hereby grants to the Wilkes-Barre 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.

Sec. 14-6 Procedures; expanded 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 discriminatory practice;
 - (d) If applicable, the address and a description of the dwelling unit which is involved; and
 - (e) Such other information as may be required by the Wilkes-Barre City Human Relations Commission.
- (2) Complaints may be filed in person at the City Clerk's Office or by mailing such complaints to the City Clerk's Office or to the Chairperson of the Wilkes-Barre City Human Relations Commission. All complaints must be received by the City Clerk's Office or by the Wilkes-Barre City Human Relations Commission within 180 days of the alleged act of discrimination to be considered timely.
- (3) The City Clerk's Office shall convey all original complaints received by that office to the Chairperson of the Wilkes-Barre City Human Relations Commission within ten (10) days of the office's receipt of such complaints.

B. Notification and answer.

- (1) Within 30 days of its receipt of a complaint, the Wilkes-Barre City Human Relations Commission shall:
 - (a) Send a copy of the complaint to the person(s) charged with a discriminatory practice [the "respondent(s)"]; and
 - (b) 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.

- (2) 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 City Clerk's Office, it shall be conveyed by the City Clerk to the Chairperson of the Wilkes-Barre City Human Relations Commission within ten (10) days of the City Clerk's Office's receipt thereof. The Commission shall promptly send a copy of the answer to the person(s) aggrieved.

C. Fact-finding conference.

- (1) After the answer has been received, the Commission shall, within sixty (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 thirty (30) days of being invited to participate.
- (2) 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 thirty (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 C(3) below.
- (3) 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 thirty (30) days, shall prepare findings of fact and a conclusion as to whether the Commissioner finds probable cause that an unlawful practice has occurred.

D. Disposition of the complaint. Provided the Commission has not elected under Subsection E 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.

E. 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 Subsection F of this section, subject to approval by the Wilkes-Barre 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.

F. Expanded procedures.

- (1) 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 C(3) 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 Subsection F(2) through (7) of this section.
- (2) 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.
- (3) 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.
- (4) 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.
- (5) 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 banc.

- (c) At the public hearing, the case in support of the complaint shall be presented to the Commission by pro bono counsel, or by Commission staff. 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.
- (6) *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 chapter, the Commission shall state its finding 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.
- (7) *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.

Sec. 14-7 Private right of action; remedies.

- A. Any person(s) aggrieved by a violation of this chapter shall have a right of action in the Luzerne County Court of Common Pleas or any other court of competent jurisdiction and may recover for each violation the following remedies:
 - (1) 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;
 - (2) Emotional distress damages;
 - (3) Exemplary damages;
 - (4) Reasonable attorneys' fees and court costs; and
 - (5) Such other relief, including injunctive relief, as the court may deem appropriate.
- B. The right of action created by this chapter 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 chapter must be brought by the aggrieved person within one year from the date of receipt of said notice or it will be barred.

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

SEVERABILITY.

The provisions of this ordinance are severable. If any part of this ordinance is declared to be unconstitutional, illegal or invalid, the validity of the remaining provisions shall be unaffected thereby. It is the intention of the Council of the City of Wilkes-Barre that this ordinance would have been adopted had such unconstitutional, illegal or invalid part not been included.

REPEALER.

All ordinances or parts of ordinances inconsistent herewith are hereby repealed. All ordinances not specifically amended hereby remain in full force and effect.

Passed finally by the Council of the City of Wilkes-Barre on _____
_____, 2016.

This ordinance shall become effective ten (10) days after final passage by the Council of the City of Wilkes-Barre.

Attest:

Jim Ryan, City Clerk