

[PROPOSED SUBSTITUTE]

County Council of Cuyahoga County, Ohio

Ordinance No. O2018-0009

Sponsored by: County Executive Budish and Councilmembers Brady, Miller, Houser and Simon	An Ordinance enacting Chapter 206.13: Commission on Human Rights and Title 15: Anti-Discrimination to ensure equal opportunity and treatment for all citizens of Cuyahoga County.
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WHEREAS, it is the desire of the Council of Cuyahoga County, Ohio to eliminate discrimination based upon race, color, religion, military status, national origin, disability, age, ancestry, familial status, gendersex, sexual orientation, and gender identity or expression;

WHEREAS, it is the desire of the County of Cuyahoga County, Ohio to protect and safeguard the rights and opportunities of all persons to be free from all forms of discrimination, including but not limited to discrimination based on race, color, religion, military status, national origin, disability, age, ancestry, familial status, gendersex, sexual orientation, and gender identity or expression;

WHEREAS, it is imperative that the County ensure that all persons within the County have equal access and opportunities to employment, housing, and public accommodations.

NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL OF CUYAHOGA COUNTY, OHIO:

SECTION 1. The purpose and intent in enacting this Ordinance is to promote the public welfare of all persons who live, visit, and work in the County of Cuyahoga. In furtherance of the purpose and intent of this Ordinance, the goals of the Cuyahoga County Anti-Discrimination Ordinance shall be to promote principles of diversity, inclusion, harmony, and equal treatment for all in the County of Cuyahoga through education, community events, and to ensure a mechanism for resolving Complaints filed under this Ordinance.

SECTION 2. Chapter 206.13 of the Cuyahoga County Code is hereby enacted to read as follows:

Section 206.13: Commission on Human Rights

(A) **Establishment of a Commission on Human Rights.** A County Commission on Human Rights is hereby established (“Commission”). The purpose of the Commission shall be to promote principles of diversity, inclusion, and

harmony in the County of Cuyahoga through education, community events, the provision of advice to the Cuyahoga County Council (“Council”) and Cuyahoga County Executive (“Executive”), and through receiving and resolving Complaints filed under this Title.

(B) Composition. The Commission shall consist of three (3) members appointed by the Executive subject to confirmation by the Council. As a quasi-judicial body, the members of the Commission shall be composed of attorneys licensed to practice in the State of Ohio. Members of the Commission shall serve without compensation but may be reimbursed for their reasonable expenses incurred in the performance of their duties.

(C) Term. Persons appointed to the Commission shall serve as members for a term of 24 months or until a successor is appointed. No person shall serve as a member of the Commission for more than two consecutive 24-month terms.

The Commission shall elect a chairperson. The chairperson shall serve for a term of 24 months. The Commission may designate the same member to serve as the chairperson of the Human Rights Commission for a second term of 24 months or until a successor is appointed.

(D) Meetings of Commission; Quorum. The Commission shall meet quarterly and at such other times as the chairperson directs. A simple majority of the members of the Commission shall constitute a quorum for the transaction of business.

(E) Vacancy; Removal.

(1) A member of the Commission may be removed by an affirmative vote of the other members if he or she has unexcused absence at two or more regular meetings of the Commission during any calendar year.

(2) In the event of such vacancy, death, resignation, or removal of any person either as member, or chairperson, the successor shall be appointed by the Executive to serve the unexpired term for which such person had been so appointed. A person appointed to an unexpired term pursuant to this section may, in addition, serve two consecutive terms.

(F) Governance. The Commission shall formulate its own rules and procedures in accordance with the rules and procedures as set forth in Title 15. The Commission may create volunteer Task Forces, Advisory Councils, or Sub-Committees as it deems appropriate.

(G) Budget. There shall be a line item in the County’s Budget to cover the operating expenses of the Commission, including staff salaries.

(H) Functions and Responsibilities. The functions and responsibilities of the Commission shall include the following:

- (1) Receive and investigate complaints under Title 15.
- (2) Provide all required notices under ~~this Title~~ Title 15;
- (3) Attempt to conciliate or mediate complaints alleging violations under ~~this Title~~ 15;
- (4) Recruit, appoint, train, and supervise the professional and clerical staff for the administration and operation of ~~the Anti-Discrimination Ordinance~~ this Chapter and Title 15;
- (5) Promote principles of diversity, inclusion, and harmony in the County of Cuyahoga through education and community events to:
 - (a) Foster mutual understanding and respect among all persons in the County of Cuyahoga and encourage equality of treatment for, and prevent discrimination against any group or its members;
 - (b) Educate all persons residing and working in the County of Cuyahoga and, in particular, employers, landlords, educators, and business owners, about the importance of non-discrimination toward each member of the community.
 - (c) Conduct investigations and studies related to the problems and effects of prejudice, intolerance, bigotry, and discrimination, and ways to prevent and eliminate them and any other studies that will aid in effectuating the general purposes and provisions of this Title. Issue publications and reports of investigations and research related to said studies;
 - (d) Establish advisory-commissions from the community and/or utilize existing county boards and commissions to assist the Executive in the execution of his/her duties and functions related to outreach and education efforts. The advisory-commissions may furnish advice, gather information, and make recommendations related to community relations/discrimination prevention;
 - (e) Work with federal, state and city agencies in developing educational programs, public forums, and strategies for achieving harmonious inter-group relations within the County of Cuyahoga,

and to engage in other anti-discrimination activities for the promotion of equal rights and opportunities for all persons; and

- (f) Enlist the cooperation of various groups and organizations in mediation efforts, programs and campaigns devoted to preventing and eliminating prejudice, intolerance, bigotry and discrimination.
- (6) Submit an annual report of activities by March 1st of each Calendar Year to the Executive and the Council, which shall be published on the County's website. Such annual report shall include information for the calendar year regarding:
- (a) *Inquiries received from the public.* The information regarding inquiries received by and from the public shall include, but not be limited to:
 - (i) total number of inquiries;
 - (ii) number of inquiries made by limited-English proficient persons disaggregated by language;
 - (iii) subject matter of inquiries disaggregated by the alleged category of unlawful discriminatory practice as set forth in this Title and the protected class of person, and
 - (iv) number of inquiries resolved by pre-hearing intervention.
 - (b) Complaints filed under ~~this~~-Title 15. The information regarding Complaints filed shall include, but not be limited to, the number of Complaints filed and shall be aggregated by:
 - (i) category of alleged ~~unlawful~~-discriminatory practice(s), as set forth under ~~this~~-Title 15, alleged;
 - (ii) basis of the alleged discriminatory practice based on the protected class of the Complainant;
 - (iii) whether the Complaint was resolved by mediation, conciliation, or referral as set forth under ~~this~~-Title 15; a finding of no discrimination, as set forth in ~~this~~-Title 15; or hearing, as set forth under ~~this~~-Title 15;
 - (iv) number of days the Complaint was outstanding at the time such resolution occurred; and

- (v) whether a civil penalty was imposed and, if so, the dollar amount of such penalty.

(I) Powers and Duties. The Commission shall enforce the provisions of this Chapter and Title 15 of this Code and any rules or regulations promulgated thereunder. The powers and duties of the Commission shall include the following:

- (1) Shall and have jurisdiction to review, hear, decide, and enforce final decisions rendered under Title 15 as set forth in Section 1502.05;
- (2) Issue subpoenas to compel the attendance of witnesses and require the production of any evidence relating to any matter under investigation and consideration under Title 15, and to take proof with respect thereto;
- (3) Command the production of any names of persons necessary for the investigation of any person, institution, workplace, club, or other place or provider of public accommodation under Title 15;
- (4) Require any person or persons who are the subject of an investigation under Title 15 to preserve such records as are in the possession of such person or persons and to continue to make and keep the type of records that have been made and kept by such person or persons in the ordinary course of business within the previous two years, which records are relevant to the determination whether such person or persons have committed unlawful discriminatory practices as defined by Title 15 with respect to activities in the County of Cuyahoga;
- (5) Upon a finding of discriminatory practice in violation of Title 15, issuing cease and desist order(s), assessing a civil administrative penalty against any Respondent, and taking any such further action authorized under Title 15;
- (6) Recommend to the Executive and to the Council, legislation to aid in carrying out the purposes of Title 15 and for the promotion of equal rights and opportunities for all persons;
- (7) Adopt, promulgate, amend and rescind rules and procedures necessary to carry out the purposes and provisions of Title 15;
- (8) Taking all necessary action in the appropriate court to secure the production of all records, documents, or other evidence necessary in carrying out the provisions of Title 15;

(9) Enter into contracts for goods or services as may be reasonably necessary to fulfill the Commission’s duties in accordance with the County’s contracts and purchasing procedures.

(10) Exercising all powers reasonable and necessary to fulfill the purpose of this Chapter and Title 15.

(J) Professional and Clerical Staffs of the Commission. The Commission may appoint such professional, clerical, and other positions as may be necessary to properly carry out its duties in accordance with the budget approved by Council.

(K) Executive Director; Duties.

(1) The County Executive shall appoint an Executive Director to oversee the day to day activities of the Commission and to execute the policies and other actions approved by the Commission.

(2) The Executive Director shall be responsible for the recruitment, selection, training, and supervision of the professional and clerical staff and shall oversee the administration and operation of the Commission.

(3) The Executive Director shall attempt to conciliate or mediate complaints through the recruitment of volunteer attorneys or other persons with training in civil rights law whenever practical.

SECTION 3. Title 15 of the Cuyahoga County Code is hereby enacted to read as follows:

Title 15: Anti-Discrimination

Chapter 1501: Unlawful Discrimination

Section 1501.01: Definitions

As used in this chapter of the Cuyahoga County Code:

(A) The prohibitions in this Title concerning “Age” means individuals who are at least forty (40) years old.

(B) “Burial Lot” means any lot for the burial of deceased persons within any public burial ground or cemetery, including but not limited to, cemeteries owned and operated by companies or associations incorporated for cemetery purposes.

- (C) “Commission” means the Human Rights Commission created by Section 206.13.
- (D) “Complaint” means any petition or written statement under oath that alleges a violation of and/or discriminatory practice or act under this Title.
- (E) “Complainant” means any person who claims to have suffered an injury under this Title.
- (F) “Conciliation Agreement” means a written agreement resolving or otherwise disposing of issues raised by a Complaint through informal negotiations, and which is entered by the parties and the Commission or prior to an adjudicatory hearing.
- (G) “Disability” means a physical or mental impairment that substantially limits one (1) or more major life activities, including the functions of caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working; a record of a physical or mental impairment; or being regarded as having a physical or mental impairment.
- (H) “Physical or mental impairment” includes any of the following:
- (1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one (1) or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine;
 - (2) Any mental or psychological disorder, including but not limited to an intellectual disability, organic brain syndrome, emotional or mental illness, and learning disabilities;
 - (3) Diseases and conditions, including, but not limited to, orthopedic, visual, speech, and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, human immunodeficiency virus infection, intellectual disability, emotional illness, drug addiction, and alcoholism.
- (I) “Substantially limits” means the ability of an individual to perform a major life activity as compared to most people in the general population. An impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity to be considered substantially limiting.

A determination of whether a physical or mental impairment substantially limits a major life activity should be made without regard to the ameliorative effects of mitigating measures, except ordinary eyeglasses and contact lenses.

An impairment that is episodic in nature or in remission is a disability if it would substantially limit a major life activity when active.

- (J) “Physical or mental impairment” does not include any of the following:
- (1) Pedophilia, exhibitionism, voyeurism, or any other sexual or behavioral disorders;
 - (2) Compulsive gambling, kleptomania, or pyromania;
 - (3) Psychoactive substance use disorders resulting from current illegal use of controlled substance and current use of alcoholic beverages.
- (K) “Discriminate and discrimination” includes the segregation, separation, maltreatment, ill-treatment, or any unfavorable difference in treatment based on race, color, religion, military status, national origin, disability, age, ancestry, familial status, gendersex, sexual orientation, gender identity or expression, ~~marital status, familial status, or alienage or citizenship~~.
- (L) “Employee” means an individual employed by any employer and includes “independent worker and/or contractor,” but does not include any individual employed in the domestic service of any person.
- (M) “Employer” means any person who employs four (4) or more persons, within the County of Cuyahoga.
- (N) “Employment Agency” means any persons regularly undertaking with or without compensation, to procure opportunities for employment or to procure, recruit, refer, or place employees.
- (O) The prohibitions in this Title concerning “Familial Status” means individuals who fit either of the following circumstances:
- (1) One (1) or more individuals who are under eighteen (18) years of age and who are domiciled with a parent or guardian having legal custody of the individual or domiciled, with the written permission of the parent or guardian having legal custody, with a designee of the parent or guardian;
 - (2) Any person who is pregnant or in the process of securing legal custody of any individual who is under eighteen (18) years of age;

(P) “Family” includes a single individual, civil unions, and same-sex or heterosexual-marriage based relationships.

~~(R)~~ “Gender” means male, female, neither or undefined. The terms “because of gender” and “based on gender” include pregnancy, pre and post gender-affirming procedure, any illness arising out of and occurring during a pregnancy, childbirth, or related medical conditions.

~~(T)~~(Q) “Gender identity or expression” means an individual’s actual or perceived gender-related identity, appearance, expression, mannerisms, or other gender-related characteristics, regardless of the individual’s designated sex at birth.

~~(U)~~(R) “Housing accommodations” includes any building or structure or portion thereof, which is used or occupied or is intended, arranged, or designed to be used or occupied as a home residence, or sleeping place of one or more individuals, groups or families, whether living independently of each other; and any vacant land offered for sale or lease. It also includes any housing accommodations held or offered for sale or rent by a real estate broker, salesperson, or agent, or by any other person pursuant to authorization of the owner, by the owner, or by such person’s legal representative.

~~(V)~~(S) “Labor organization” includes any organization that exists for the purpose, in whole or in part, of collective bargaining or other mutual aid or protection in relation to employment.

~~(W)~~(T) “Mediation” means an informal conference held by a neutral third party to help —the parties resolve their disputes prior to a hearing on Complaint filed under this Title.

~~(X)~~(U) “Military Status” means any person who is engaged in the “service in the uniformed services, a member of “uniformed services” or veteran.

~~(Y)~~(V) “Person” includes one (1) or more individuals, partnerships, associations, organizations, corporations, legal representatives, trustees, and trustees in bankruptcy, receivers, and other organized groups of persons. It also includes, but is not limited to, any owner, lessor, assignor, builder, manager, broker, salesperson, appraiser, agent, employee, and lending institutions.

~~(Z)~~(W) “Place of public accommodation” means any hotel, motel, inn, restaurant, eating establishment, public swimming pool, public sports facility, public sports arena, theme park, amusement parks, museum, barbershop, public conveyance by air, land or water, movie theater, music arena, concert hall, performing arts venue, theater, store, or other place for the sale of merchandise to the public, or any other place of public accommodation or

amusement where the accommodation advantages, facilities, or privileges thereof are available to the public.

~~(AA)~~(X) “Respondent” means any person, business entity, organization or agency who is notified to defend or substantiate their alleged discriminatory actions or activities under this Title.

~~(BB)~~(Y) “Restrictive covenant” means any specification in a contract, deed, land-contract, or lease limiting the transfer, rental, lease or other use of any housing accommodations because of race, color, religion, military status, national origin, disability, age, ancestry, familial status, gendersex, sexual orientation, or gender identity or expression or any limitation based upon affiliation with or approval by any person, directly or indirectly, employing race, color, religion, military status, national origin, disability, age, ancestry, familial status, gendersex, sexual orientation, or gender identity or expression as a condition of affiliation or approval.

~~(Z)~~ “Service in the Uniformed Services” means the performance of duty, on a voluntary or involuntary basis, in a uniformed service, under competent authority, and includes active duty, active duty for training, initial active duty for training, inactive duty for training, full-time national guard duty, reserve duty in uniform, and performance of duty or training by a member of the Ohio organized militia pursuant to Chapter 5923 of the Ohio Revised Code. “Service in the uniformed services” includes also the period of time for which a person is absent from a position of public or private employment for the purpose of an examination to determine the fitness of the person to perform any duty described in this division.

~~(CC)~~(AA) The terms “because of sex” and “on the basis of sex” include, but are not limited to, because of or on the basis of pregnancy, any illness arising out of and occurring during the course of a pregnancy, childbirth, or related medical conditions.

(AB) “Sexual orientation” means homosexuality, bisexuality, or heterosexuality.

(AC) “Uniformed services” means the Armed Forces, the Ohio organized militia when engaged in active duty for training, inactive duty training, or full-time national guard duty, the commissioned corps of the public health service, and any other category of persons designated by the president of the United States in time of war or emergency.

(AD) “Unlawful discriminatory practice” means any act prohibited under this Title.

(AE) “Veteran-~~status~~” means any person who has completed service in the armed forces, including the national guard of any state, or a reserve component of the armed forces, ~~who has been discharged under honorable conditions from the~~

~~armed forces or who has been transferred to the reserve with evidence of satisfactory service.~~

Section 1501.02: Prohibited Discriminatory Practices

(A) Fair Housing.

- (1) It shall be an unlawful discriminatory practice for any person to:
 - (a) Refuse to sell, transfer, assign, rent, lease, sublease, finance or otherwise deny, withhold, or discriminate against any person in housing accommodations because of race, color, religion, military status, national origin, disability, age, ancestry, gendersex, familial status, sexual orientation, or gender identity or expression of any prospective owner, occupant, or user of such housing accommodations;
 - (b) Represent to any person for a discriminatory purpose that housing accommodations are not available, or unavailable for inspection when in fact they are so available;
 - (c) Refuse to lend money or extend credit, whether or not secured by mortgage or otherwise, for the rental, acquisition, construction, rehabilitation, repair, or maintenance of housing accommodations or otherwise withhold financing of housing accommodations from any person because of based on race, color, religion, military status, national origin, disability, age, ancestry, gendersex, familial status, sexual orientation, or gender identity or expression of any present or prospective owner, occupant, or user of such housing accommodations, provided such person, whether an individual, corporation, or association of any type, lends money as one of the principal aspects of their business or incidental to their principal business; but not as long as the lending is part of the purchase price of an owner-occupied residence who is selling their own residence or when such residence is sold by owner to a relative or friend;
 - (d) Discriminate against any person in the terms or conditions of selling, transferring, assigning, renting, leasing or, subleasing any housing accommodations or in furnishing facilities, services, or privileges in connection with the ownership, occupancy or use of any housing accommodations, including the sale of fire, extended coverage, or homeowners insurance, because of race, color, religion, military status, national origin, disability, age, ancestry, gendersex, familial status, sexual orientation, or gender identity or expression of any present or prospective owner, occupant, or user of such housing accommodations;

- (e) Discriminate against any person in the terms or conditions of any loan of money or credit extension, whether or not secured by mortgage or otherwise, for the acquisition, construction, rehabilitation, repair, or maintenance of any housing accommodations because of race, color, religion, military status, national origin, disability, age, ancestry, gendersex, familial status, sexual orientation, or gender identity or expression of any present or prospective owner, occupant, or user of such housing accommodations;
- (f) Make, print, publish, or circulate any statement or advertisement relating to the sale, transfer, assignment, rental, lease, sublease, or acquisition of any housing accommodations or the loan of money or credit extension, whether or not secured by mortgage or otherwise, for the acquisition, construction, rehabilitation, repair, or maintenance of housing accommodations which indicates any preference, limitation, specification, or discrimination based upon race, color, religion, military status, national origin, disability, age, ancestry, gendersex, familial status, sexual orientation, or gender identity or expression, of any present or prospective owner, occupant, or user of such housing accommodations;
- (g) Make any inquiry, elicit any information, or make or keep any record, or use any form of application containing questions or entries concerning race, color, religion, military status, national origin, disability, age, ancestry, gendersex, familial status, sexual orientation, or gender identity or expression, in connection with the sale, rent, or lease of any housing accommodations or the loan of any money or extension of credit, whether or not secured by a mortgage or otherwise, for the acquisition, construction, rehabilitation, repair or maintenance of housing accommodations;
- (h) Include in any contract, deed, land-contract, or lease of housing accommodations any restrictive covenant, or honor or exercise, or attempt to honor or exercise, any restrictive covenant, that would prohibit, restrict, or limit the sale, transfer, assignment, rental lease, sublease, or finance of housing accommodations to or for any person because of race, color, religion, military status, national origin, disability, age, ancestry, gendersex, familial status, sexual orientation, or gender identity or expression of any prospective owner, occupant, or user of such housing accommodations so long as in accordance with the law;
- (i) Induce or solicit, or attempt to induce or solicit, any housing accommodations listing, sale, rent, or transaction by representing

that a change has occurred or may occur in the block, neighborhood, or area in which the housing accommodations are located, which change is related to the presence or anticipated presence of any persons based on race, color, religion, military status, national origin, disability, age, ancestry, gendersex, familial status, sexual orientation, or gender identity or expression;

- (j) Induce or solicit or attempt to induce or solicit, any housing accommodations listing, sale, rent, or transaction by representing that the presence or anticipated presence of persons of any race, color, religion, military status, national origin, disability, age, ancestry, gendersex, familial status, sexual orientation, or gender identity or expression in the area will or may negatively impact the property, including, but not limited to:
 - (i) The lowering of property values;
 - (ii) A refusal by current or prospective neighbors to live in the area;
 - (iii) An increase in criminal or antisocial behavior in the area; or
 - (iv) A decline in the quality of schools serving the area.
- (k) Discourage or attempt to discourage the purchase by prospective purchasers of any housing accommodations by representing that any block, neighborhood, or area has or might undergo a change based upon race, color, religion, military status, national origin, disability, age, ancestry, gendersex, familial status, sexual orientation, or gender identity or expression of the residents;
- (l) Deny any person access to or membership or participation in any multiple listing service, real estate, brokers' organization, or other service, organization, or facility relating to the business of selling or renting housing accommodations, or to discriminate against them in the terms of conditions of such access, membership, or participation, on account of race, color, religion, military status, national origin, disability, age, ancestry, gendersex, familial status, sexual orientation, or gender identity or expression;
- (m) Coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or because of that person's having exercised or enjoyed, or on account or having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this section;

- (n) Whether or not acting under color of law, by force or threat of force willfully injure, intimidate or interfere with, or attempt to injure, intimidate, or interfere with:
- (i) Any person based on race, color, religion, military status, national origin, disability, age, ancestry, gendersex, familial status, sexual orientation, or gender identity or expression and because that person is or has been selling, purchasing, renting, financing, occupying or contracting or negotiating for the sale, purchase, rental, financing, or occupation of any dwelling, or applying for or participating in any service, organization, or facility relating to the business of selling or renting housing accommodations;
 - (ii) Any person because that person is or has been, or to intimidate such person or any other person or any class of persons from:
 - (a) Participating, without discrimination based on race, color, religion, military status, national origin, disability, age, ancestry, sexgender, familial status, sexual orientation, or gender identity or expression in any of the activities, services, organizations, or facilities described in this Section;
 - (b) Affording another person or class of persons the opportunity or protection so to participate; or
 - (c) Discouraging any person from lawfully aiding or encouraging other persons to participate, without discrimination on account of based on race, color, religion, military status, national origin, disability, age, ancestry, gendersex, familial status, sexual orientation, or gender identity or expression in any of the activities, services, organizations, or facilities described in division of this Section, or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate.
 - (o) Refuse to sell, transfer, assign, rent or lease, sublease, finance or otherwise deny or withhold a burial lot from any person because of race, color, religion, military status, national origin, disability, age, ancestry, gender,sex, familial status, sexual orientation, or gender identity or expression of any prospective owner or user of such lot;
or

(p) For any person to discriminate in any manner against any other person because that person has opposed any unlawful discriminatory practice defined in this Title, or because that person has made a charge, testified, assisted, or participated in any manner, in any investigation, proceeding, or hearing under the provisions of this Title.

(2) Exemptions:

(a) Nothing in this Section shall bar any religious or denominational institution or organization, or any nonprofit charitable or educational organization that is operated, supervised, or controlled by or in connection with a religious organization, from limiting the sale, rental, or occupancy of housing accommodations that it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference in the sale, rental, or occupancy of such housing accommodations to persons of the same religion, unless membership in the religion is restricted on account of race, color, religion, military status, national origin, disability, age, ancestry, gendersex, familial status, sexual orientation, or gender identity or expression.

(b) Nothing in this Section shall bar any bona fide private or fraternal organization that, incidental to its primary purpose, owns or operates lodgings for other than a commercial purpose, from limiting the rental or occupancy for the lodgings to its members or from giving preference to its members.

(c) Nothing in this Section limits the applicability of any reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy housing accommodations. Nothing in that division prohibits the owners or managers of housing accommodations from implementing reasonable occupancy standards based on the number and size of sleeping areas or bedrooms and the overall size of a dwelling unit, provided that the standards are not implemented to circumvent the purposes of this chapter and are formulated, implemented, and interpreted in a manner consistent with this chapter and any applicable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy housing accommodations.

(d) Nothing in this Section requires that housing accommodations be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

- (e) Nothing in this Section pertaining to discrimination based on familial status shall be construed to apply to any of the following:
 - (i) Housing accommodations provided under any state or federal program that have been determined under the “Fair Housing Amendments Act of 1988,” 102 Stat. 1623, 42 U.S.C. 3607, as amended, to be specifically designed and operated to assist elderly persons;
 - (ii) Housing accommodations intended for and solely occupied by persons who are sixty-two years of age or older;
 - (iii) Housing accommodations intended and operated for occupancy by at least one person who is fifty-five years of age or older per unit, as determined under the “Fair Housing Amendments Act of 1988,” 102 Stat. 1623, 42 U.S.C. 3607, as amended.
- (f) Nothing in Section shall be construed to require any person selling or renting property to modify the property in any way or to exercise a higher degree of care for a person with a disability, to relieve any person with a disability of any obligation generally imposed on all persons regardless of disability in a written lease, rental agreement, or contract of purchase or sale, or to forbid distinctions based on the inability to fulfill the terms and conditions, including financial obligations, of the lease, agreement, or contract.
- (g) The provisions of this Section relating to the rental of a dwelling shall not apply to the following:
 - (i) If the dwelling unit is inadequate, under applicable laws and ordinances relating to occupancy, to house all persons who intend to live there;
 - (ii) The refusal to rent to a person because the person is under the age of majority;
 - (iii) Solely with respect to age and familial status, to the restriction of the sale, rental or lease of housing accommodations exclusively to individuals 62 years of age or older and the spouse of any such individual, or for housing intended and operated for occupancy by at least one individual 55 years of age or older per unit;

- (iv) To limit a landlord's right to establish and enforce legitimate business practices necessary to protect and manage the rental property, such as the use of references. Further, nothing in this section requires that a housing accommodation or multiple dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of their individuals or whose tenancy would result in substantial physical damage to the property of others. However, this subdivision shall not be used as a pretext for discrimination in violation of this Section.

(B) Unlawful Employment Practices.

- (1) It shall be an unlawful discriminatory practice, except where based upon applicable national security regulations established by the United States:
 - (a) For any employer, because of race, color, religion, military status, national origin, disability, age, ancestry, gendersex, sexual orientation, or gender identity or expression, to discharge without cause, to refuse to hire a person or otherwise to discriminate against any person with respect to hire, promotion, tenure, discharge, or any terms, conditions or privileges of employment, or any matter related to employment;
 - (b) For any employer, employment agency, or labor organization to establish, announce or follow a policy discriminating against, denying, or limiting, the employment or membership opportunities of any person or group of persons because of race, color, religion, military status, national origin, disability, age, ancestry, gendersex, sexual orientation, or gender identity or expression;
 - (c) For any employer, labor organization, or joint labor-management committee controlling apprentice training programs to discriminate against any person because of that person's race, color, religion, military status, national origin, disability, age, ancestry, gendersex, sexual orientation, or gender identity or expression in admission to employment in any program established to provide apprentice training;
 - (d) For any employer, employment agency, or labor organization to publish or circulate, or to cause to be published or circulated, any notice or advertisement relating to employment or membership which indicates any preference, limitation, specification or discrimination based upon race, color, religion, military status, national origin, disability, age, ancestry, gendersex, sexual orientation, or gender identity or expression;

- (e) For any person seeking employment to publish or to cause to be published any advertisement which specifies or in any manner indicates that person's race, color, religion, military status, national origin, disability, age, ancestry, gendersex, sexual orientation, or gender identity or expression of any prospective employer;
- (f) For any employment agency to refuse or fail to accept, register, classify properly, or refer for employment or otherwise to discriminate against any person because of a person's race, color, religion, military status, national origin, disability, age, ancestry, gendersex, sexual orientation, or gender identity or expression;
- (g) For any employer, employment agency, or labor organization to utilize in the recruitment or hiring of persons, any employment agency, placement service, labor organization, training school or center, or any other employee-referring source, known to discriminate against persons because of race color, religion, military status, national origin, disability, age, ancestry, gendersex, sexual orientation, or gender identity or expression;
- (h) For any labor organization to discriminate against any person or limit that person's employment opportunities, or otherwise adversely affect that person's status as an employee, or that person's wages, hours, or employment conditions, because of race, color, religion, military status, national origin, disability, age, ancestry, gendersex, sexual orientation, gender identity or expression;
- (i) For an employment agency, to comply with, accommodate, or otherwise assist with locating an employee related to a request from an employer for referral of applicants for employment if the request indicates that the employer fails, or may fail, to comply with this Title;
- (j) For any labor organization to limit or classify its membership based on race, color, religion, military status, national origin, disability, age, ancestry, gendersex, sexual orientation, or gender identity or expression;
- (k) Except where based on a bona fide occupational qualification, for any employer, employment agency or labor organization to:
 - (i) Elicit or attempt to elicit any information concerning the race, color, religion, military status, national origin,

disability, age, ancestry, gendersex, sexual orientation, or gender identity or expression of an applicant for employment or membership;

- (ii) Use any form of application for employment or personnel or membership blank seeking to elicit information regarding race, color, religion, military status, national origin, disability, age, ancestry, gendersex, sexual orientation, or gender identity or expression but an employer holding a contract containing a non-discrimination clause with the government of the United States or any department or agency thereof, may require an employee or applicant for employment to furnish documentary proof of United States citizenship and may retain such proof in the employer's personnel records and may use photographic or fingerprint identification for security purposes;
- (iii) Voluntary requests for demographic information by an employer to aid in Diversity and Inclusion efforts are not unlawful.

- (l) For any employer, employment agency or labor organization to discriminate against any person because that person has opposed any practice forbidden by this Title, or because that person has made a complaint or assisted in any manner in any investigation or proceeding or hearing under this Title.
- (m) For any person to aid, incite, compel, coerce, or participate in the doing of any act declared to be an unlawful discriminatory practice by this Title, or to obstruct or prevent any person from enforcing or complying with the provisions of this Title, or to attempt to commit any act declared by this Title, to be an unlawful discriminatory practice by this Title, or to attempt to obstruct or prevent any person from enforcing or complying with the provisions of this chapter, or to attempt to commit any act declared by this Title, to be an unlawful discriminatory practice.

- (2) Exemptions. This section does not apply to a religious corporation, association, educational institution, or society with respect to the employment of an individual of a particular religion to perform work connected with the carrying on by that religious corporation, association, educational institution, or society of religious activities.

(C) Unlawful Discrimination ~~i~~n ~~The~~ a Place of Public Accommodations.

- (1) It shall be an unlawful discriminatory practice:

- (a) For any proprietor or any employee, agent, keeper, or manager of a place of public accommodation to deny, discriminate against, or treat differently any person except for reasons applicable alike to all persons regardless of race, color, religion, military status, national origin, disability, age, ancestry, ~~gender~~sex, sexual orientation, or gender identity or expression the full enjoyment of the accommodations, advantages, facilities, or privileges of a place of public accommodation;
- (b) For any person to knowingly aid, incite, compel, coerce, or participate in the doing of any act declared to be an unlawful discriminatory practice under this Section.

(D) False Complaints

No person shall knowingly file a complaint including false or fraudulent information, submitted in bad faith with the intent to defame or to cause other reputational or material harm to an individual or organization. A determination or finding by the Commission that a complaint is unsubstantiated is, alone, insufficient to prove the existence of a false complaint. Upon a finding by the Commission that a Complainant has filed a false complaint, the Commission may impose a civil penalty on the Complainant as provided in Section 1501.05.

(E) Diversity and Inclusion Efforts

- (1) Unless otherwise prohibited by law, nothing contained in this Title shall be construed to prohibit diversity and inclusion efforts and promotional activities and practices designed primarily to encourage participation by members of any historically marginalized protected group, in furtherance of the purposes of this Title.
- (2) It shall not be an unlawful discriminatory practice for any person to carry out an affirmative action plan. An affirmative action plan is any plan devised to effectuate remedial or corrective action taken in response to past discriminatory practices against a historically marginalized group, or as otherwise required by state or federal law.

Section 1501.03: Complaint and Enforcement Procedure

(A) Complaints.

- (1) Whenever it is alleged in writing and under oath, by a person, referred to as the "Complainant", that any person, employer, employment agency, and/or labor organization referred to as the "Respondent", has engaged

or is engaging in any unlawful discriminatory practice or act as defined in Section 1501.02 of this Title, the Commission or its authorized designee must determine immediately, no later than five (5) business days of receipt of the Complaint, whether a Complaint of discrimination alleges a violation based on race, color, religion, military status, national origin, disability, age, ancestry, familial status, gendersex, sexual orientation, or gender identity or expression.

(2) If the Complaint alleges a violation based on race, color, religion, military status, national origin, disability, age, ancestry, or gendersex, or familial status, the Complainant shall ~~be~~ immediately be instructed to file a charge of discrimination, if he or she chooses, with the Ohio Civil Rights Commission (OCRC) and ~~or either the U.S. Department of Housing and Urban Development's Office of Fair Housing and Equal Opportunity (FHEO) or the~~ Equal Employment Opportunity Commission (EEOC):

(a) The Commission shall provide the Complainant with information about this requirement and the contact information for the OCRC~~,~~ FHEO, and EEOC.

(b) The Complainant shall be notified no later than 3-five (5) business days via Certified Mail of the Commission's decision declining jurisdiction to investigate and hear the Complaint.

(3) Complaints of discrimination alleging a violation of this Title based on sexual orientation or gender identity or expression, along with an allegation of race, color, religion, military status, national origin, disability, age, ancestry, familial status, or gender-sex discrimination (a "hybrid complaint") ~~shall may~~ be subject to deferral to the OCRC/~~and/or~~ FHEO/EEOC as set forth in this section.

(a) The Commission shall notify a Complainant of the potential additional rights and remedies available by filing a hybrid charge with OCRC/FHEO/EEOC, and that by failing to file with state and federal authorities the Complainant may forego their right to do so in the future. Such notification shall be in writing and by Certified Mail within five (5) business days via Certified mail of the Commission's decision to refer the Complaint to OCRC/FHEO/EEOC.

(a)(b) In the event a Complainant declines, in writing, to file a charge with OCRC/FHEO/EEOC, the Commission may adjudicate the complaint in accordance with this Chapter. In the event a Complainant elects to file a charge with OCRC/FHEO/EEOC, the Commission shall not hear the hybrid complaint while the matter

remains pending at the state or federal level unless and until such complaint, in its entirety, reaches a final disposition; provided, however, nothing in this paragraph prohibits a Complainant from filing a separate complaint as provided in paragraph (A)(4) of this Section.

~~(3)~~(4) Complaints of discrimination alleging a violation of this Title based exclusively on sexual orientation and/or gender identity or expression shall be adjudicated by the Commission in accordance with this Chapter without deferral of the complaint to OCRC/FHEO/EEOC unless and until state or federal law is revised to grant OCRC/FHEO/EEOC jurisdiction to adjudicate allegations of discrimination on the basis of sexual orientation and/or gender identity or expression, at which time such complaints may be subject to deferral. If the OCRC-and/or-/FHEO/EEOC dismisses a charge of discrimination timely filed under this Ordinance-Title and-based on sexual orientation, or-gender identity or expression, or any other protected category specified in this Title for lack of jurisdiction, the Complainant may, within thirty (30) days of such dismissal, request the charge to proceed under this Title-Ordinance. Upon the request, the Commission shall handle the case in accordance with this Title.

~~—Any Complainant who timely filed a charge of discrimination under this Title may request the Commission to review the final determination made by the OCRC/EEOC on charges of discrimination containing the same allegations as in the original charge filed under this Ordinance. Such request for review must be made within thirty (30) days of the OCRC/EEOC's final disposition of the charge.~~

~~(4) If a request for review is made under this section, the Commission shall have no authority to proceed under this Ordinance unless the Commission finds that the decision of the OCRC/EEOC was arbitrary, capricious, or not in accordance with law. Upon such finding, the Commission shall process the charge pursuant to this Title.~~

~~(4) The Commission has no authority to review any charge under this Title if the Complainant has appealed the OCRC/EEOC decision to court or otherwise challenged the alleged unlawful discrimination in state or federal court.~~

(B) Deadline for Filing. A Complaint alleging discrimination under Section 1501.02(A) of this Title shall be filed with the Commission- within three hundred and thirty (330) days after the alleged unlawful discriminatory practices or acts are committed. 120-A Complaint alleging discrimination under any other Section of this Title shall be filed with the Commission within one hundred and fifty (150) days after the alleged unlawful discriminatory

practices or acts are committed, ~~or 120 days after the Complainant knew or should have known of such discrimination.~~ The Complaint shall be filed upon oath and affirmation and shall contain such information, including the date, place and circumstances of the alleged discriminatory practice or act.

The Commission through its designee shall serve notice upon the Complainant acknowledging such filing and advising the Complainant of the time limits provided herein.

(C) Respondent.

- (1) Within fourteen (14) days of the filing of the Complaint, the Commission or its designee shall serve a copy of the Complaint and a written notice upon the Respondent identifying the alleged discriminatory practices and setting forth the rights and obligations of the parties. Such service shall be by certified mail return receipt requested.
- (2) A person who is not named as a Respondent in a Complaint, but who is identified as a Respondent in the course of an investigation, may be joined as an additional or substitute respondent upon written notice to such person from the Commission. Notice shall be served upon such additional or substitute respondent(s) within ten (10) days of such joinder or substitution and shall explain the basis for the Commission's belief that the person to whom the notice is addressed is properly joined as a respondent.
- (3) The Respondent may file an answer or response to the Complaint, no later than thirty (30) days after service of the Complaint.
- (4) Respondent's response or answer shall be served by the Commission ~~upon~~ the Complainant within 7 days of receipt by the Commission.

(D) Conciliation/Mediation. The Executive Director shall notify the Complainant and Respondent of the option of voluntary mediation to resolve the Complaint. The Executive Director or designee shall endeavor to eliminate such practices by methods of conference, conciliation, and mediation, to the extent feasible.

- (1) The Executive Director may designate an outside mediator for attempting conciliation or mediation.
- (2) Nothing said or done in the course of conciliation/mediation shall be disclosed to or be used as evidence in any subsequent proceeding or civil action.

- (3) Conciliation/Mediation shall be completed within 60 days of the filing of the Complaint and shall toll or suspend all other dates and deadlines under this Title. If conciliation/mediation fails, a final decision upon the Human Rights Complaint by the Commission shall be issued on the complaint within 90 days.
 - (4) A conciliation agreement arising out of such conciliation or mediation shall be reduced to a written agreement executed by the Respondent and Complainant. This agreement shall be subject to the approval of the Commission.
 - (5) The Commission may impose civil penalties for a violation or breach of a conciliation agreement.
- (E) **Dismissal of Complaint.** The Commission upon concluding that the Complaint is meritless, or for ~~administrative convenience~~ Complainant's failure to prosecute, may dismiss a complaint at any time. Such dismissal shall constitute a final appealable order. The Commission shall promptly serve notice upon the Complainant, Respondent, and any necessary party of any dismissal pursuant to this section.

Section 15012.04: Commission Hearings

- (A) **Notice and Conduct of Hearing.** The Commission shall cause to be served upon the Respondent and Complainant by certified mail a notice notifying the Respondent and Complainant of a hearing before the Commission at a time and place therein fixed to be held 30 days after the service of such notice and stating the allegations specified in the Complaint made against the Respondent. The Commission may consider requests for continuances for good cause.
- (B) **De Novo Hearing.** Commission hearings ~~must~~ shall be scheduled within 90 days from the date of receipt of the Complaint, unless it is impracticable to do so. If the Commission is not able to commence the hearing within 90 days after the filing of the Complaint, the Commission shall notify the Complainant and Respondent in writing of the reasons for not doing so.
- (C) **De Novo Standard of Review and Preponderance of the Evidence Burden of Proof.** The Commission shall employ a *de novo* standard of review in its review and consideration of all evidence and testimony submitted at the hearing. The Complainant bears the burden to demonstrate by preponderance of the evidence a violation under this Title.
 - (1) The parties shall appear at the hearing and present testimony and evidence or otherwise to examine and cross-examine testimony and evidence.

- (2) In the course of the hearing, the Commission may ~~conduct~~ interviews examine witnesses, administer oaths, take testimony of any person under oath, and receive evidence.
- (3) **Subpoena power.** The Commission shall have the power to issue subpoenas enforceable by injunction by the party requesting same or by the County itself, in a court of competent jurisdiction, to compel the attendance of witnesses and require the production by them of books, papers, documents and other materials relevant to any case under consideration. Subpoenas may be served by certified mail, by private process server designated by the hearing authority or by anyone who could lawfully serve said subpoena in a judicial proceeding of a civil nature.
- (4) In any proceeding, the Commission shall not be bound by the rules of evidence prevailing in the courts of law or equity, but shall, in ascertaining the practices followed by the Respondent, take into account all reliable, relevant, probative, and substantial evidence, statistical data, or otherwise, produced at the hearing, which may tend to prove the existence of a predetermined pattern of discriminatory practice or act; provided, that nothing contained in this section shall be construed to authorize or require any person to observe the proportion which persons of race, color, religion, military status, national origin, disability, age, ancestry, gendersex, sexual orientation, or gender identity or expression bear to the total population or in accordance with any criterion other than the individual qualifications of the applicant.

(D) **Final Decision and Order.**

- (1) If upon all the reliable, probative, and substantial evidence, the Commission determines that by the preponderance of the evidence that the Respondent has engaged in, or is engaging in, any unlawful discriminatory practice or act as set forth in this Title against the Complainant or others, the Commission shall issue a written decision and state findings of fact and conclusions of law, and shall issue and cause to be served on such Complainant and Respondent via certified mail an order requiring the Respondent to cease and desist from such unlawful discriminatory practice or act, and to take such further affirmative or other action as will effectuate the purposes of this Title, including any penalties set forth herein.
- (2) If the Commission finds that no reliable, probative and substantial evidence exists for crediting the allegations, or, if upon all the evidence, the Commission finds that a Respondent has not engaged in any unlawful discriminatory practice or act against the Complainant or

others, the Commission shall state findings of fact and conclusions of law, and shall issue and cause to be served on the Complainant and Respondent via certified mail an order dismissing said complaint as to such Respondent.

- (3) The Commission shall issue a decision within 30 days after the hearing, unless it is impractical to do so. The Commission shall notify the Complainant and Respondent in writing of the reasons for not doing so.
- (4) The decision of the Commission shall be issued and served upon the parties via certified mail.

Section 15012.05: Violation and Remedy

(A) **Notice of Violation and Order to Cease and Desist:** If upon all the evidence presented, the Commission determines that the Respondent has engaged in, or is engaging in, any unlawful discriminatory practice or act under this chapter Title, whether against the Complainant or others, the Commission shall issue a notice of violation, and shall issue an order to Respondent to cease and desist the unlawful discriminatory practice. This notice will constitute a Final Administrative Decision.

(B) **Civil Administrative Penalty:** Upon the issuance of an order that a Respondent has engaged in, or is engaging in, an unlawful discriminatory practice or act as set forth in this Title, or that a Complainant has filed a false complaint, the Commission may impose the following civil penalty:

- (1) Up to \$1,000 for a first offense in the five years preceding the filing of the charge;
- (2) Up to \$2,500 for a second offense in the five years preceding the charge.
- (3) Up to \$5,000 for a third or subsequent offense in the five years preceding the charge.
- (4) The civil administrative penalty shall be due at least 30 days after the issuance of the Commission's final decision. The filing of an appeal shall suspend the imposition of any fine. In the event of an appeal, the civil administrative penalty shall be due 30 days after all unsuccessful appeals or after exhaustion of all appeals.
- (5) All penalties collected shall be deposited in a separate fund to defray costs and enforcement of this Title, and to support the County's efforts in eradicating discrimination.

(C) Reasonable Attorneys' Fees. If the Commission finds the Respondent has violated this Title, the Commission may, in addition to injunctive relief and/or civil penalty, award reasonable attorneys' fees and costs to the Complainant.

~~(C)~~(D) **Failure to Comply with Lawful Order/Enforcement.** The Commission is authorized to institute in the name of the County of Cuyahoga any appropriate civil enforcement proceedings.

In the event the respondent refuses or fails to comply with the Commission's decision or violates any of the provisions of this Title, the Commission may certify the case and the entire record to the to an appropriate court and seek enforcement or compliance with the Final Administrative Decision.

If an appeal has been taken by the Respondent, the Commission may move to consolidate the appeal and enforcement proceedings.

Section 15012.06: Appeal to the Court of Common Pleas

(A) Any party to the proceeding, claiming to be aggrieved by a final decision of the Commission, may obtain judicial review. Such decision may be appealed within 30 days to the Cuyahoga Court of Common Pleas consistent with the provisions of Chapters 2505 and 2506 of the Ohio Revised Code.

(1) Transmission of Record upon Appeal to Common Pleas Court. The ~~Clerk of the Board~~Executive Director shall, upon the written request of a party, furnish copies of the record and such other documents in the Commission's possession that may be required in judicial proceedings related to a ruling by the Commission. The cost of the written transcription and the cost of transmission to the Court of Common Pleas shall be borne by the Appellant, unless otherwise determined to be indigent by the Commission. Upon determination of indigence, the cost of transcription is to be borne by the Commission, but such cost shall be subject to all necessary budget appropriation.

Section 15021.07: Severability

This Title and each article and section thereunder, are hereby declared to be independent divisions and sub-divisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said divisions, or the application thereof to any person or circumstance is held to be invalid, the invalidity shall not affect other divisions or sub-divisions, and it is hereby declared that such divisions and sub-divisions would have been passed independently of such division or sub-division so known to be invalid.

SECTION 4. It is found and determined that all formal actions of this Council relating to the adoption of this Ordinance were adopted in an open meeting of the Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

On a motion by _____, seconded by _____, the foregoing Ordinance was duly enacted.

Yeas:

Nays:

County Council President

Date

County Executive

Date

Clerk of Council

Date

First Reading/Referred to Committee: June 12, 2018

Committee(s) Assigned: Committee of the Whole

Legislation Substituted in Committee: July 24, 2018

Journal _____
_____, 2018