



City of Chamblee
City Council Agenda Item

Department: Administrative
Prepared By: Jon Walker
Initiator: Jon Walker

ACTION ITEM (ID # 2418)

SUBJECT: NONDISCRIMINATION ORDINANCE

Meeting Date: March 19, 2019, 7:30 PM

REQUESTED ACTION:

Adopt the nondiscrimination ordinance as presented.

BACKGROUND SUMMARY:

The Cities of Atlanta and Doraville have nondiscrimination ordinances. The intent of the attached ordinance is to protect and safeguard the right and opportunity of all persons to be free from all forms of discrimination, including discrimination based on actual or perceived race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteran status.

The ordinance allows for individuals to report violations of the ordinance to the city. The city would investigate such alleged violations and seek to resolve any issue. Should the issue not be resolved through conciliation, the City's hearing officer would hear the matter and make a determination if a violation occurred. A fine of \$500 is provided for a first offense and \$1,000 for each offense thereafter.

Attachment List:

Non Discrimination Ordinance V16 (PDF)

Review:

Jon Walker	Completed	01/03/2019 2:40 PM
City Council	Completed	01/10/2019 6:00 PM
City Council	Completed	03/19/2019 7:30 PM
City Council	Completed	04/16/2019 7:30 PM

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES OF THE CITY OF CHAMBLEE, GEORGIA, BY ADOPTING A NEW ARTICLE V, "UNLAWFUL DISCRIMINATION" IN CHAPTER 58, "OFFENSES AND MISCELLANEOUS PROVISIONS" AND FOR ALL OTHER LAWFUL PURPOSES

BE IT ORDAINED AND IT IS HEREBY ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF CHAMBLEE, GEORGIA that the Code of Ordinances of the City of Chamblee shall be amended as follows:

PART I:

A new Article V titled "Unlawful Discrimination" shall be created in Chapter 58, "Offenses and Miscellaneous Provisions", which shall read as follows:

ARTICLE V – UNLAWFUL DISCRIMINATION

Sec. 58-120 - Purpose and Intent. It is the purpose and intent of the Chamblee City Council to protect and safeguard the right and opportunity of all persons to be free from all forms of discrimination, including discrimination based on actual or perceived race, color, religion, national origin, ancestry, sex, sexual orientation, gender identify, age, disability, marital status, familial status, or veteran/military status. The Council's purpose in enacting this ordinance is to promote the public health and welfare of all persons who live and work in the City of Chamblee. It is important for the City to ensure that all persons within the City have equal access to employment, housing, and public accommodations.

Sec. 58-121 - Definitions. For the purposes of this ordinance, the following terms shall have the following meanings:

- (1) AGE. An individual's status as having obtained forty or more years of age.
- (2) BUSINESS. Any person or entity conducting business within the city, which is required to obtain a license or permit.
- (3) DISCRIMINATE, DISCRIMINATION OR DISCRIMINATORY. Any act, policy or practice that, regardless of intent, has the effect of subjecting any person to differential treatment as a result of that person's actual or perceived race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteranstatus.
- (4) EMPLOYEE. Any individual employed by or seeking employment from an employer, excluding any individual employed by his or her parents, spouse, or child.
- (5) EMPLOYER. A person who employs one or more employees in the City of Chamblee, or any agent of such person.
- (6) FAMILIAL STATUS. Means an individual's past, current or prospective status as

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- parent or legal guardian to a child or children below the age of eighteen (18) who may or may not reside with that individual.
- (7) GENDER IDENTITY. The actual or perceived gender-related identity, expression, appearance, or mannerisms, or other gender-related characteristics of an individual, regardless of the individual's designated sex at birth.
 - (8) HEARING OFFICER. A person charged with determining the validity of alleged violations of this article, and upon determining that a violation has occurred, assessing appropriate damages, penalties, fines or costs.
 - (9) MARITAL STATUS. An individual's past, current, or prospective status as single, married, domestically partnered, in a civil union, divorced, or widowed.
 - (10) NATIONAL ORIGIN. An individual's, or an individual's ancestor's, place of origin.
 - (11) PLACE OF PUBLIC RESORT, ACCOMMODATION, ASSEMBLAGE, OR AMUSEMENT. Any place, store, or other establishment, either licensed or unlicensed, that supplies accommodations, goods, or services to the general public, or that solicits or accepts the patronage or trade of the general public, or that is supported directly or indirectly by government funds.
 - (12) RELIGION. All aspects of religious belief, observance, and practice.
 - (13) RELIGIOUS ORGANIZATION. An entity which conducts regular worship services or is qualified as a religious organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as now or hereafter amended, that is not required to file IRS Form 990, return of Organization Exempt from Income Tax, under any circumstances.
 - (14) SEXUAL ORIENTATION. Actual or perceived homosexuality, heterosexuality, or bisexuality.
 - (15) VETERAN/MILITARY STATUS. An individual's status as one who serves or served in the uniformed services, military, naval or air service, and who was discharged or released under conditions other than dishonorable.

Sec. 58-122 - Civil Rights Declared. The right of an otherwise qualified person to be free from discrimination because of that person's actual or perceived race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteran/military status is recognized as and declared to be a civil right. This right shall include, but not be limited to, all of the following:

- (1) The right to obtain and hold employment and the benefits associated therewith without discrimination.
- (2) The right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement without discrimination.
- (3) The right to engage in property transactions, including obtaining housing for rental or sale and credit therefor, without discrimination.
- (4) The right to exercise any right granted under this ordinance without suffering coercion or retaliation.

Sec. 58-123 - Exceptions. Notwithstanding the foregoing, the following are not discriminatory practices prohibited by Sec. 58-121 (3) of this ordinance:

- (1) A religious corporation, association, or society that employs an individual of a particular religion to perform work connected with the performance of religious activities by the corporation, association, or society.
- (2) An employer who observes the conditions of a bona fide affirmative action plan or a bona fide seniority system which is not a pretext to evade the purposes of this ordinance.
- (3) A business is not required to hire unqualified or incompetent personnel.
- (4) This ordinance does not prohibit an employer from requiring an employee, during the employee's hours at work, to adhere to reasonable and equitable dress or grooming standards not prohibited by other provisions of Federal, State or local law, provided that all employees are permitted to dress in a manner consistent with their gender identity.
- (5) This ordinance does not prohibit a nonprofit private club in fact not open to the public, which as an incident to its primary purpose provides lodging which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy to its members or from giving preference to its members.
- (6) A business is not required to make changes to any existing facility that would require a building permit, except as otherwise required by law.
- (7) This ordinance does not prohibit a religious organization from limiting its non-commercial accommodations, advantages, facilities, membership, and privileges to persons of the same religion.

Sec. 58-124 - Enforcement. Subject to the procedures developed by the City of Chamblee, the City shall receive and may initiate, investigate, seek to conciliate, hold hearings on and/or pass upon complaints alleging violations of this ordinance.

- (1) Any person aggrieved by a potential violation of this ordinance may file a complaint with the City Clerk on a form to be provided by the city. Any such complaint must be filed within ninety (90) calendar days after the alleged act of discrimination. A filing fee of \$50 shall be paid by the complainant at the time of filing and may be refunded upon a finding in the complainant's favor.
- (2) The City Clerk shall cause the complaint to be served to the alleged violator within seven (7) business days of receipt of properly filed complaint via priority first class mail, certificate of mailing, or via statutory overnight delivery.
- (3) The City Clerk shall cause a copy of the complaint to be served upon the City Manager, Mayor and City Council within three (3) business days of receipt of properly filed complaint, via electronic mail.
- (4) The City Manager shall refer the complaint to a mediator for non-binding mediation. Notice of mediation will be sent to the complainant and alleged violator not less than

ten (10) calendar days in advance. Participation is voluntary, however the case shall be dismissed should the complainant not attend or show just cause for not participating. Any mediation hereunder shall be conducted in accordance with procedures to be established by the mediator.

- (5) If, within ten (10) business days of the conclusion of mediation, either party notifies the City Clerk in writing that such person is dissatisfied with the results, or if the alleged violator elects not to participate in mediation, the complaint shall be referred to a Hearing Officer appointed by the City Manager. The Hearing Officer shall be a competent attorney at law of good standing in his/her profession and have experience in the area of constitutional law and employment discrimination.
- (6) The Hearing Officer shall review the complaint and answer, if any, to determine if the complaint is in conformity of the requirements, is unjustified, frivolous, or patently unfounded, or demonstrates facts sufficient enough to invoke disciplinary jurisdiction as set forth in this ordinance. Should the Hearing Officer determine that the complaint does not meet requirements, he/she may dismiss, however must state the reasons for dismissal in his/her report.
- (7) Upon determination that the complaint should not be dismissed, the Hearing Officer shall be empowered to collect evidence and information concerning any complaint and add the findings and results of its investigations to the file.
- (8) In all hearing officer proceedings, the burden of proof shall be placed upon the complaining party. Further, the quantum of proof required to establish a violation under this ordinance shall be based upon a preponderance of the evidence.
- (9) Either party may call a witness by submitting a request in writing to the hearing officer, seven (7) business days in advance of the hearing. The request must explain the importance of the witness. Either party may choose to be represented by legal counsel or to not testify.
- (10) Within seven (7) business days of completion of the investigation, to include a hearing. The Hearing Officer shall either:
 - A) Dismiss the complaint on the grounds that it is unjustified, frivolous, patently unfounded or fails to state facts sufficient to invoke the disciplinary jurisdiction of the City of Chamblee, or
 - B) Find that a violation of this ordinance has occurred, and thus the Hearing Officer may apply a civil penalty of \$500 for the first violation and \$1000 or suspension/revocation of the occupation tax certificate for subsequent violations. The Hearing Officer may recommend that the violator's Occupation Tax Certificate be revoked. The recommendation for revocation must be voted upon by City Council within sixty (60) days of the Hearing Officers recommendation.
- (11) The Mediator's fees and the Hearing Officer's fees shall be assessed to the non-prevailing party unless the Hearing Officer determines that circumstances warrant assessing the cost in some other manner.
- (12) The Hearing Officer must submit all documentation of his/her decisions to the City Manager, Mayor and City Council within ten (10) business days of the conclusion and determination of the claim.

- (13) Any party adversely affected by the final decision regarding the complaint may appeal to the City of Chamblee Municipal Court. The appeal must be filed in writing with the City Court Clerk within fourteen (14) calendar days of the adverse decision. In the case that a revocation must be voted upon by City Council, the decision is not final until the City Council has undertaken the vote.

Sec. 58-125 - Other Remedies. This ordinance may not be construed to limit any other remedies available under local, state, or federal law.

Sec. 58-126 - Report of hate crimes.

- (1) Definition of hate crime. Any crime committed because of the actual or perceived race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteran/military status of the victim.
- (2) Responsibilities of law enforcement and other officials.
 - A. The City of Chamblee shall develop guidelines for the identification, investigation, documentation, and reporting of hate crimes committed within the corporate limits of the City of Chamblee.
 - B. The City of Chamblee shall provide training to its law enforcement personnel on local, state, and federal laws involving hate crimes as well as departmental policies on proper identification, investigation, documentation, and reporting of hate crimes.
 - C. The City of Chamblee shall ensure that sufficient resources are made available to the Chamblee Police Department to develop and implement a standardized system for collecting and analyzing hate crimes committed within the corporate limits of the City.
 - D. The City of Chamblee shall provide annual statistical data regarding the occurrence of hate crimes and the groups or individuals targeted to the Federal Bureau of Investigation, pursuant to 28 U.S.C. 534, for entry into the national crime information databases.

PART II

It is hereby declared to be the intention of the Mayor and City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgement or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance.

The foregoing was proposed by Council member _____ with a motion that the same be adopted. Said motion was seconded by Council member _____. Same was then put to a vote and _____ Council members voted in favor of the ordinance, and _____ Council members voted against the ordinance. Said motion was thereupon declared

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passed and duly adopted this _____ day of _____, 2019.

Emmie D. Niethammer
City Clerk, City of Chamblee, Georgia

Approved this _____ day of _____, 2019.

The Honorable R. Eric Clarkson
Mayor, City of Chamblee, Georgia

Approved as to form: _____
Joe Fowler, City Attorney

First Reading: March 19, 2019

Second Reading: _____

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