

CITY OF CLARKSTON

CLARKSTON CITY COUNCIL MEETING

ITEM NO: G4

HEARING TYPE:  
Council Meeting

BUSINESS AGENDA / MINUTES

ACTION TYPE:  
Ordinance

MEETING DATE: April 2, 2019

SUBJECT: Adopt a Non-Discrimination Ordinance

DEPARTMENT: Administration

PUBLIC HEARING:  YES  NO

ATTACHMENT:  YES  NO  
Pages: 7

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PURPOSE:

To consider Adopting a Non-Discrimination Ordinance.

NEED/ IMPACT:

The City of Clarkston desires to consider adopting a non-discrimination ordinance that would provide for a process for aggrieved persons to file a complaint.

RECOMMENDATIONS:

No staff recommendation.

## CLARKSTON NON-DISCRIMINATION ORDINANCE

### Sec. 1. – Definitions.

For purposes of this ordinance, certain terms shall be interpreted or defined as follows unless the context clearly indicates otherwise.

*Age* means an individual's status as being 40 years of age or older.

*Business* means any person or entity conducting business within the City, which is required to obtain a license or permit. For purposes of this ordinance, no department of any government agency shall be considered to be a business (notwithstanding licensure by the City).

*Complainant* means an individual that files a complaint pursuant to this ordinance.

*Employee* means any person employed by or seeking employment from any business within the City of Clarkston. Employee does not include any individual employed by such individual's parents, spouse or child or in the domestic service of any person.

*Familial status* means persons 18 years of age or older who are spouses, former spouses, parents or stepparents and children or stepchildren, and persons who are presently residing together or have resided together in the past, and persons who have a child in common regardless of whether they have been married or have lived together at any time.

*Gender identity* means the actual or perceived gender-related identity, expression, appearance, mannerisms, or other gender related characteristics, regardless of the individuals designated sex at birth.

*Hearing officer* means a qualified neutral third party charged with determining the validity of alleged violations of this ordinance, and upon determining that a violation has occurred, imposing an appropriate penalty or other resolution.

*Mediator* means a qualified neutral third party that will attempt to assist the Complainant and the Respondent(s) to arrive at a mutual agreement to resolve a complaint.

*Military status* means a person who is serving or has served in the uniformed services, and who, was discharged or released under conditions other than dishonorable, as specified in 38 U.S.C. 101(2), or amendments thereto. Uniformed services are defined as set forth in 20 C.F.R. 1002.5(o), or amendments thereto.

*Person* means an individual, corporation, partnership, association, labor organization, legal representative, mutual company, joint-stock company, trust, unincorporated organization, trustee, trustee in bankruptcy, receiver and fiduciary.

*Place of public accommodation* means any place, store, or other establishment, that supplies accommodations, goods or services to the general public, or that solicits or accepts the patronage or trade to the general public, or that is supported directly or indirectly by government funds. The term

does not include any private club, bona fide membership organization, or other establishment that is not in fact open to the public.

*Religious organization* means 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.

*Rental housing* means any real property which is required to obtain a license or permit from the City of Clarkston.

*Respondent* means the individual and/or business accused of violating this ordinance in a complaint.

*Sexual orientation* means an individual's actual or perceived orientation as heterosexual, homosexual, bisexual or asexual.

*To rent* means to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

## **Sec. 2. – Discriminatory Practices.**

(a) It shall be an unlawful discriminatory practice for a business, because of the race, religion, color, sex, disability, national origin, ancestry, sexual orientation, gender identity, age or military status of any person to refuse to hire or employ such person to bar or discharge such person from employment or to otherwise discriminate against such person in compensation or in terms, conditions or privileges of employment; to limit, segregate, separate, classify or make any distinction in regards to employees; or to follow any employment procedure or practice which, in fact, results in discrimination, segregation or separation.

(b) It shall be an unlawful discriminatory practice for a business to discriminate against any person in the terms, conditions or privileges of sale or rental of real property, age or rental housing, or in the provision of services or facilities in connection therewith, because of race, religion, color, sex, disability, familial status, national origin, ancestry, sexual orientation, gender identity or military status, or to discriminate against any person in such person's use or occupancy of rental housing because of the race, religion, color, sex, disability, familial status, national origin ancestry, sexual orientation, gender identity, or military status of the people with whom such person associates.

(c) It shall be an unlawful discriminatory practice for any business, as defined herein being the owner, operator, lessee, manager, agent or employee of any place of public accommodation, to refuse, deny or make a distinction, directly or indirectly, in offering its goods, services, facilities, and accommodations to any person as covered by this ordinance because of race, religion, color, sex, disability, national origin, ancestry, sexual orientation, gender identity, , age or military status. Notwithstanding the above, nothing in this ordinance shall be construed to prevent any business as defined in this ordinance from offering, affording or providing any additional benefit or additional discount to a person because of such person's military status.

- (d) Nothing in this ordinance shall be construed to mean that a business shall be forced to hire unqualified or incompetent personnel or discharge qualified or competent personnel.
- (e) Nothing in this ordinance shall 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.
- (f) Nothing in this ordinance shall prohibit a religious organization to employ an individual of a particular religion to perform work connected with the performance of religious activities by the religious organization. Nor shall this ordinance prohibit a religious organization from limiting its non-commercial accommodations, advantages, facilities, membership, and privileges to persons of the same religion.
- (g) Nothing in this ordinance shall prohibit a nonprofit private club in fact not open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.
- (h) Nothing in this ordinance shall be construed to require any entity subject to this ordinance to make changes requiring a building permit to any existing facility, except as otherwise required by law.
- (i) This ordinance shall not be construed in such a way as to violate any person's rights under the Constitution of the United States or the Georgia Constitution.

### **Sec. 3. – Complaints.**

- (a) Any person aggrieved by an alleged violation of this ordinance may file complaint with the City Clerk on a form to be provided by the City. The aggrieved person's full name shall be written on the subject complaint. The complainant shall verify the complaint by providing a sworn statement that the allegations of the complaint are true to the best of the complainant's knowledge and belief. Any such complaint must be filed within 90 days after the alleged act of discrimination. A filing fee of \$50.00 shall be paid by the Complainant contemporaneously with the filing of all discrimination complaints, however, Complainant shall receive a refund of the filing fee if the complainant and respondent(s) reach a voluntary settlement or if the complaint survives the dismissal provisions of Section 6(b) of this ordinance.
- (b) The City Clerk shall cause the complaint to be served on the person accused of a violation as soon as practicable but in no event later than seven (7) calendar days after receipt of a verified complaint. Service may be by personal service, by a certified mail, return receipt requested or by statutory overnight delivery.
- (c) The City Clerk shall cause a copy of the complaint to be served upon all City Council Members within forty-eight hours after receipt of a verified complaint by electronic mail to the Council Members' government email address. A copy of the verified complaint shall also be placed in each Council Member's designated mailbox.

(d) All complaints, and related material maintained by the City shall be public records subject to the Georgia Open Records Act.

#### **Section 4. – Mediation.**

(a) The complaint shall first be referred to a mediator for non-binding mediation. Participation in mediation shall be voluntary for both parties. The mediator shall be selected by the city clerk from a list of qualified mediators approved by the city manager. The City shall pay the mediator for the first two hours of mediation time. Any fees charged by the mediator for mediation time in excess of two hours shall be split equally between the parties, unless at the conclusion of the mediation both parties agree to assess these costs of mediation in some other manner.

(b) Any mediation hereunder shall be conducted in accordance with procedures to be established by the mediator.

(c) If, within 15 days of the conclusion of the mediation, either party notifies the City Clerk in writing that such person is dissatisfied with the results of the mediation, or if either party elects not to participate in mediation, the complaint shall be referred to a Hearing Officer per Section 5 of this ordinance.

(d) If the parties agree to a settlement in mediation, such settlement shall be reduced to writing and filed with the City Clerk.

#### **Sec. 5. – Appointment of Hearing Officer.**

(a) All complaints not resolved by mediation shall be submitted to a Hearing Officer. Such officer shall be a competent attorney at law in good standing with the State Bar of Georgia with at least five (5) years' experience in the practice of law. The City Clerk shall maintain a listing of no less than five (5) qualified attorneys willing to serve as a Hearing Officer pursuant to this section. Upon receipt of notice that the complaint was not resolved by mediation, the City Clerk shall draw names randomly from the listing of qualified Hearing Officers and appoint the first one who is available to serve in the matter.

(b) Upon appointing a hearing officer, the City Clerk shall promptly notify such officer, as well as the Complainant and Respondent(s) of such appointment. Such notification shall include directions on how the Parties may communicate with the Hearing Officer.

#### **Sec. 6. – Pre-Hearing Procedures.**

(a) The Respondent(s) shall have fifteen (15) days from the date that the City Clerk notifies the Respondent of the Hearing Officer appointment to file an answer to the complaint with the hearing officer. However, the Respondent shall have no obligation to file an answer to any complaint.

(b) Upon the expiration of the fifteen (15) day answer period, the Hearing Officer shall review the complaint and answer, if any, to determine: (i) whether the complaint is in conformity of the requirements of Section 3 of this ordinance, or (ii) whether upon consideration of the complaint and

answer, the complaint is unjustified, frivolous, or patently unfounded. If the complaint fails either of these inquiries, the Hearing Officer shall dismiss it.

(c) If the complaint is dismissed based upon the requirements of the foregoing subsection (b), the Hearing Officer must state the reasons for said dismissal in writing and file such findings with the City Clerk.

(d) Upon a determination that the complaint should not be dismissed pursuant to the foregoing subsection (b), the Hearing Officer shall be empowered to collect evidence and information concerning any complaint and to add the findings and results of its investigations to the file containing such complaint. In furtherance of this investigation, the Hearing Officer may:

(i) Seek further information from the complainant and/or the Respondent through inquiry or written questions, provided, however the Respondent shall have no obligation to answer any inquiries, and/or

(ii) Conduct a hearing regarding the allegations set forth in the complaint pursuant to Section 7 of this ordinance.

(e) All investigations under this section shall be completed within thirty (30) days of receipt of the respondent's answer or the expiration of the 15-day answer period, whichever date is earlier

(e) If the Hearing Officer deems appropriate, such Officer may request that the City Council issue a subpoena compelling one or more witnesses to testify at a hearing held pursuant to Section 7.

#### **Section 7. Hearing Before Hearing Officer.**

(a) In all Hearing Officer proceedings under this section, the burden of proof shall be on the complainant. The quantum of proof required to establish a violation under this ordinance shall be based on a preponderance of the evidence.

(b) At any hearing, the respondent(s) shall have the right: (i) to representation by counsel at all stages of these proceedings, (ii) to written notice of the hearing at least ten (10) calendar days before the hearing, (iii) to hear and examine the evidence and cross-examine witnesses, (iv) to not testify, and (v) to submit evidence and call witnesses to oppose or mitigate the allegations.

(c) The Complainant is entitled to representation by the City of Clarkston's public defender at any hearing held pursuant to this section at the City's expense. If the complainant wishes to be represented by the public defender, the complainant must request such representation in a writing submitted to the city clerk at least fourteen (14) days prior to the hearing date. The public defender may seek a continuance of the hearing date, and such request shall be freely granted, generally.

(d) All hearings held pursuant to this section shall be open to the public and shall be recorded by video.

(e) No formal rules of evidence, including the Georgia Rules of Evidence for Civil Procedure and the Georgia Administrative Procedures Act, apply to a hearing pursuant to this Section.

(f) The Hearing Officer may accept any evidence, including hearsay evidence, that such Officer deems credible. If the Hearing Officer discredits hearsay evidence or otherwise excludes said evidence, the decision to do so must be explained, in writing, as part of the Hearing Officer's decision regarding the verified complaint.

(g) A Complainant may request that witness(es) be subpoenaed to testify at the hearing by submitting a request to the Hearing Officer while also explaining the importance of the witness. If it is alleged that the witness saw or heard matters at issue in the verified complaint, then the Hearing Officer shall request the City Council to subpoena the witness to appear at the hearing about the complaint. The Complainant's request must be made at least ten days prior to a scheduled hearing date.

(h) Within fourteen (14) days of the completion of the investigation, to include a hearing, the Hearing Officer shall issue a decision pursuant to Section 8.

### **Section 8. Hearing Officer's decision.**

(a) After the Hearing is complete, the Hearing Officer shall make findings of fact, apply the specified burden of proof, and issue a written decision finding that the Respondent(s) either violated this ordinance or did not.

(b) The Hearing Officer's fees and expenses of the hearing shall be paid by the City unless the Hearing Officer determines that the circumstances warrant assessing such fees, in whole or in part, against the respondent.

(c) The Hearing Officer must submit all documents and information related to all verified complaints to the City Clerk, along with the Hearing Officer's findings and orders, to be placed on file. In the case of written decision made by the Hearing Officer, the City Clerk shall provide a copy of the decision to the Mayor, City Council Members and the City Manager within 48 hours of the City Clerk receiving said decision.

(d) When the Hearing Officer determines that the Respondent(s) violated this ordinance, the order making such finding shall also include:

(i) A recommendation of a potential voluntary settlement, which may include equitable remedies and/or a civil penalty in an amount not to exceed \$1,000.00, that the Hearing Officer believes would be appropriate to resolve the complaint; and

(ii) a recommendation to the City Council that the City Council suspend for a period of time or revoke one or more permits or licenses held by the Respondent(s) if the Respondent(s) do not reach a settlement with the complainant.

### **Section 9. - City Council Action on Business License.**

(a) If the Hearing Officer's final order recommends that one or more license(s) or permit(s) held by the Respondent(s) be suspended or revoked, the matter shall be placed on the agenda of the next

regular council meeting that will take place at least twenty-one (21) days from the date of the Hearing Officer's order.

(b) If the Respondent(s) submit written acceptance of the settlement proposed by the Hearing Officer, or if the complainant and Respondent(s) otherwise jointly inform the City Clerk of a settlement, then the matter shall be removed from the Council agenda.

(c) The City Council shall accept the Hearing Officer's findings of fact and determination of whether a violation of this ordinance occurred. The City Council shall not hear or consider any new evidence but may consider arguments by the complainant and/or the Respondent(s) as to what action it should take.

(d) If the matter is referred to the City Council for action, the Council may, by majority vote of a quorum of its members, suspend or revoke one or more licenses held by the Respondent(s).

#### **Section 10. - Appeal.**

Any Respondent adversely affected by the City Council's decision to suspend or revoke a license or permit may appeal the Council's decision to DeKalb County Superior Court by writ of certiorari. The party choosing to appeal must do so within thirty (30) days of the adverse decision. Any such certiorari appeal to superior court shall be conducted strictly on the record established by the hearing officer.

#### **Section II. Promulgation of Ordinance.**

All businesses licensed by the City must provide a copy of this Ordinance to their respective employees, within 60 days of obtaining their business license from the City of Clarkston. Regarding current businesses, whose license has already been obtained at the time that this Ordinance becomes effective, those businesses shall provide a copy of this Ordinance to their respective employees within 90 days of the Ordinance's effective date. The City manager shall send a notice regarding this requirement to all affected businesses (as of the day this Ordinance becomes effective) within seven days of the Ordinance's effective date.