



To: Honorable Mayor and City Council

From: Stephe Koontz, Councilmember

Date: November 1, 2018

Subject Title: Consideration of adoption of an ordinance to amend the City Codes to add an article prohibiting unlawful discriminatory practices by businesses operating within the City and setting forth an enforcement process

**City Council
Agenda Item** November 5, 2018 Work Session and Regular Meeting Agendas

Background

Doraville is a dynamic, incredibly diverse place in metro Atlanta. People from all types of backgrounds and nationalities live here. “Diversity” is such an important part of our city’s identity that it is even part of the city Motto (“Diversity, Vitality, Community”). Protecting the rights of residence and visitors to the City, ensuring unbiased services and being truly a welcoming place is critical. The proposed ordinance will further that branding of the City.

Analysis

This ordinance would provide a level of protection for employees and consumers of Doraville businesses against discrimination based on race, religion, color, sex, disability, national origin, ancestry, sexual orientation, gender identity, or military status. Doraville would be just the second city in Georgia (after Atlanta) to adopt such an ordinance. It is a little-known fact that Georgia does not have any protections for discrimination based on the statuses mentioned above – if someone is a member of a protected class and wants to file a lawsuit, they are required to file a federal lawsuit, which is a challenge for many people who might have been wronged.

The goal for Doraville’s Non-Discrimination Ordinance is to provide realistic, reasonable protections locally, and to discourage anyone operating a business or offering public accommodations here from discriminating.

Our research suggests that Non-Discrimination ordinances are tied to economic development for the cities that adopt them. Corporations that are looking for a new location are frequently drawn to municipalities that have protections in place for their employees. The draft ordinance has been shown to the developers of Assembly (site of Doraville’s former GM plant), and they have assured us that it would not have an adverse impact on their ability to attract development to the site. Several existing businesses in Doraville have also given their support.

Staff and Fiscal Impact

In talking with nearby cities, this is an opportunity for Doraville to lead the way on diversity and inclusion in our region. Currently, the City of Atlanta is the only city within Georgia to have an ordinance protecting human rights. However, the Atlanta ordinance and accompanying processes are complex and require extensive municipal resources. The ordinance proposed for Doraville is uncomplicated, easier to

administer and requires less resources. It will be a model for other small cities that do not have the same level of resources as City of Atlanta. It is anticipated that other elected officials in neighboring cities will follow our lead and pass similar ordinances after Doraville passes our own.

Ongoing administration of this ordinance does not have a significant funding component on the part of the City or required of the participants.

Recommendation

This ordinance clearly demonstrates Doraville's commitment to diversity and inclusion and I request the City Council adopt this ordinance.

**STATE OF GEORGIA
CITY OF DORAVILLE**

ORDINANCE NO. 2018-_____

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES, CITY OF DORAVILLE, GEORGIA, BY ADDING AN ARTICLE TO CHAPTER 6 (“BUSINESSES AND BUSINESS REGULATIONS”) TO BE NUMBERED XVIII (“DISCRIMINATION”); TO PROVIDE FOR REPEAL OF CONFLICTING ORDINANCES; TO PROVIDE FOR AN ADOPTION AND EFFECTIVE DATE; TO PROVIDE FOR CODIFICATION; AND TO PROVIDE FOR OTHER LAWFUL PURPOSES

WHEREAS, the duly elected governing authority of the City of Doraville, Georgia is authorized by O.C.G.A. § 36-35-3 to adopt ordinances relating to its property, affairs and local government; and

WHEREAS, the duly elected governing authority of the City of Doraville, Georgia is the Mayor and Council thereof; and

WHEREAS, the governing authority deems it essential to provide realistic, reasonable discrimination protections locally; and

WHEREAS, such measures are necessary to discourage anyone operating a business or offering public accommodations here in Doraville from discriminating.

THEREFORE, THE MAYOR AND COUNCIL OF THE CITY OF DORAVILLE, GEORGIA HEREBY ORDAIN:

Section 1

That the Code of Ordinances, City of Doraville, Georgia, is hereby amended by adding an article to Chapter 6 (“Businesses and Business Regulations”) to be numbered XVIII (“Discrimination”), which such section reads as follows:

Sec. 6-1001. – Definitions.

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

- (a) *Business* means any person or entity conducting business within the City, which is required to obtain a license or permit. For purposes of this article, no department of any government agency shall be considered to be a business (notwithstanding licensure by the City).
- (b) *Place of public accommodation* means any place, store, or other establishment, that supplies accommodations, good 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.

- (c) *Rental housing* means any real property which is required to obtain a license or permit by the City of Doraville.
- (d) *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.
- (e) *Employee* means any person employed by or seeking employment from any business within the City of Doraville. Employee does not include any individual employed by such individual's parents, spouse or child or in the domestic service of any person.
- (f) *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.
- (g) *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.
- (h) *Sexual orientation* means an individual's actual or perceived orientation as heterosexual, homosexual, bisexual or asexual.
- (i) *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.
- (j) *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 is defined as set forth in 20 C.F.R. 1002.5(o), or amendments thereto.
- (k) *Hearing officer* means a person chosen as described in Sec 2104, who is charged with determining the validity of alleged violations of this article, and upon determining that a violation has occurred, assessing appropriate damages, penalties and/or costs as provided in this article.
- (l) *Mediator* means a state registered mediator, who shall be chosen by the City to perform the duties described in Sec 6-1003.
- (m) *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.

Sec. 6-1002. – Unlawful 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 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 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 article because of race, religion, color, sex, disability, national origin, ancestry, sexual orientation, gender identity, or military status. Notwithstanding the above, nothing in this article shall be construed to prevent any business as defined in this article 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 article 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 article 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 article 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 article 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 article 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 article shall be construed to require any entity subject to this article to make changes requiring a building permit to any existing facility, except as otherwise required by law.

Sec. 6-1003. – Enforcement.

- (a) Any person aggrieved by a potential violation of this article may file a complaint with the City Clerk on a form to be provided by the City. Any such complaint must be filed within 60 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 Complaint survives the dismissal provisions of Sec 6-1005(c).
- (b) The City Clerk shall cause the complaint to be served on the person charged with 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 certified mail, return receipt requested or by statutory overnight delivery.
- (c) 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 a person, selected from a list provided by the City, to serve as the mediator. Any fees charged by the mediator 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.
- (d) Any mediation hereunder shall be conducted in accordance with procedures to be established by the mediator.
- (e) 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 as per Sec 6-1004.

Sec. 6-1004 – Appointment of Hearing Officer, Service of Complaint, Burden of Proof

- (a) All complaints not resolved by mediation shall be heard before a Hearing Officer who: (i) shall be a competent attorney at law of good standing in his or her profession, (ii) shall have at least five (5) years' experience in the practice of law, and (iii) shall not maintain an office within a ten (10) mile radius of the City of Doraville, Georgia. The City Clerk shall maintain a listing of no less than five (5) qualified attorneys, who must be licensed to practice law in the state of Georgia, to serve as a Hearing Officer pursuant to this section. Upon receipt of the letter of dissatisfaction with the results of the mediation, or if either party elects not to participate in 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) In all hearing officer proceedings under this section, the burden of proof shall be on the complaining party. Further, the quantum of proof required to establish a violation under this Ordinance shall be based on a preponderance of the evidence.

Sec. 6-1005. – Hearing.

- (a) The person violator charged in the Complaint shall have fifteen (15) days to file an answer to the complaint provided, however, the alleged violator charged 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 Sec 6-1003 above, (ii) whether upon consideration of the complaint and answer, the complaint is unjustified, frivolous, or patently unfounded, or (iii) whether upon consideration of the complaint and answer, the complaint demonstrates facts sufficient to invoke disciplinary jurisdiction as set forth in this Ordinance.
- (c) If the complaint fails based upon the requirements of the foregoing subsection (b), the Complaint shall be dismissed stating the basis for said dismissal.
- (d) Upon a determination that the complaint should not be dismissed pursuant to the foregoing subsection (c), 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 such further information from the complainant or the alleged violator charged through inquiry or written questions, provided, however the alleged violator shall have no obligation to answer any inquiries, or
 - (ii) Conduct a hearing regarding the allegations set forth in the complaint. At any hearing, the alleged violator who is the subject of inquiry 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 first hearing, (iii) to hear and examine the evidence and witnesses, (iv) to not testify, and (v) to submit evidence and call witnesses to oppose or mitigate the allegations. In all hearings held under this section, the procedures and rules of evidence applicable in civil cases shall apply.
- (e) All investigations under this section shall be completed within thirty (30) days of: receipt of the alleged violator's response or the expiration of the 15-day answer period. Should the investigation not be completed in said period, the complaint will be deemed dismissed as a failure to state facts sufficient to invoke the disciplinary jurisdiction of the City of Doraville.
- (f) Within seven (7) days of the completion of the investigation, the Hearing Officer shall either:
 - (i) Dismiss the complaint on the grounds that it is unjustified, frivolous, patently unfounded, or that it fails to state facts sufficient to invoke the disciplinary jurisdiction of the City of Doraville, or

- (ii) Finds that a violation of this article has occurred, and the Hearing Officer may apply a civil penalty in an amount up to \$500.00 for each violation.
- (g) In addition, the Mediator's fees and the Hearing Officer's fees shall be assessed to the non-prevailing party unless the Hearing Officer determines that the circumstances warrant assessing the costs in some other manner.

Sec. 6-1006. – Right To Appeal.

- (a) Any party adversely affected by the findings or recommendations of the Hearing Officer may obtain judicial review of such decision as provided in this Section.
- (b) An action for judicial review may be commenced by filing an application for a writ of certiorari in the Superior Court of Dekalb County within thirty (30) days after the final action on a complaint pursuant to this Ordinance. The filing of such application shall act as supersedeas.

Section 2

- (a) It is hereby declared to be the intention of the Mayor and Council that all sections, paragraphs, sentences, clauses and phrases of this Ordinance are or were, upon their enactment, believed by the Mayor and Council to be fully valid, enforceable and constitutional.
- (b) It is hereby declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. It is hereby further declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this Ordinance is mutually dependent upon any other section paragraph, sentence, clause or phrase of this Ordinance.
- (c) In the event that any phrase, clause, sentence, paragraph or section of this Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Mayor and Council that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or sections of the Ordinance and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs and sections of the Ordinance shall remain valid, constitutional, enforceable, and of full force and effect.

Section 3

All ordinances or parts of ordinances in conflict herewith are hereby expressly repealed.

Section 4

This Ordinance shall be codified in accordance with state law and the Code of the City of Doraville, Georgia. This Ordinance shall become effective upon adoption.

SO ORDAINED, this ____ day of _____, 2018.

CITY OF DORAVILLE, GEORGIA

Mayor

First Reading

Second Reading

APPROVED AS TO FORM:

City Attorney's Office

ATTEST:

Raquel D. González, City Clerk (SEAL)