

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES OF THE CITY OF SMYRNA, GEORGIA, BY ADOPTING A NEW ARTICLE 2, “UNLAWFUL DISCRIMINATION” IN CHAPTER 66, “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 SMYRNA, GEORGIA that the Code of Ordinances of the City of Smyrna shall be amended as follows:

PART I:

A new Article II titled “Unlawful Discrimination” shall be created in Chapter 66, “Offenses and Miscellaneous Provisions”, which shall read as follows:

ARTICLE II – UNLAWFUL DISCRIMINATION

Sec. 66-40 - Purpose and Intent. It is the purpose and intent of the Smyrna 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 race, color, religion, national origin, sex, sexual orientation, gender, disability, marital status, veteran/military status or as a result of the person being 40 years of age or older. 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 Smyrna. It is important for the City to ensure that all persons within the City have equal access to employment, housing, and public accommodations.

Sec. 66-41 - Definitions. For the purposes of this ordinance, the following terms shall have the following meanings:

- (1) **BUSINESS.** Any person or entity conducting business within the city, which is required to obtain a license or permit.
- (2) **DISCRIMINATE, DISCRIMINATION OR DISCRIMINATORY.** Any act, policy or practice that, ~~intentionally with malicious intent~~ subjects any person to differential negative treatment as a result of that person's actual or perceived race, color, religion, national origin, sex, sexual orientation, gender, disability, marital status, veteran/military status or as a result of the person being 40 years of age or older.
- (3) **EMPLOYEE.** Any individual employed by or seeking employment from an employer, excluding any individual employed by his or her parents, spouse, or child.
- (4) **EMPLOYER.** A person who employs one or more employees in the City of Smyrna, or any agent of such person.
- (5) **INITIAL CONCILIATOR. HEARING OFFICER.** An individual appointed by the mayor and city council who is a competent attorney at law in good standing with the state bar association with experience in the area of constitutional law and employment discrimination. 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.

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- (6) **MARITAL STATUS.** An individual's past, current, or prospective status as single, married, domestically partnered, in a civil union, divorced, or widowed.
- (7) **NATIONAL ORIGIN.** An individual's, or an individual's ancestor's, place of origin.
- (8) **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.
- (8)(9) **RESPONDENT.** means the person or business alleged to have violated this article
- (9)(10) **RELIGION.** All aspects of religious belief, observance, and practice.
- (10)(11) **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.
- (11)(12) **SEXUAL ORIENTATION.** Homosexuality, heterosexuality, or bisexuality.
- (12)(13) **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. 66-42 – Discrimination Prohibited. No person, Business or entity shall, within a Place of Public Resort, Accommodation, Assemblage or Amusement, Discriminate or engage in Discrimination or Discriminatory activities.

Sec. 66-43 - Exceptions. Notwithstanding the foregoing, the following are not discriminatory practices prohibited by this ordinance:

- (1) A Religious Organization, association, or society.
- (2) An Employer or Business that 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) An Employer or Business that refuses to hire personnel that in its sole but reasonable discretion it deems to be unqualified for the position.
- (4) An Employer or Business requiring an Employee, during the Employee's hours at work, to adhere to dress or grooming standards, deemed appropriate by the Employer in its sole but reasonable discretion.
- (5) A private club or other enterprise not open to the public, limiting the services or amenities that it provides to its members or from giving preference to its members.

Sec. 66-44- Physical Changes to property. This ordinance shall not require anyone to make physical changes to any property that would not otherwise be legally required to be made.

Sec. 66-45 - Enforcement. Subject to procedures developed by the City of Smyrna, the City

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shall receive and shall initiate, and seek to conciliate, 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 one-hundred and twenty (120) calendar days after the alleged act of discrimination. A filing fee of \$50 shall be paid by the complainant at the time of filing.
- ~~(2)~~ The City Clerk shall cause a copy of the complaint to be forwarded to the Initial
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- (4)(3) The Initial conciliator shall review the complaint and answer, if any, to determine if the complaint is in conformity with the requirements of this ordinance, appears unjustified, frivolous, or patently unfounded, or demonstrates facts sufficient to invoke jurisdiction as set forth in this ordinance. Should the Initial conciliator determine that the complaint does not meet the requirements of this ordinance, or is unjustified, frivolous, or patently unfounded or is based upon facts insufficient to invoke the jurisdiction as set forth in this ordinance, he/she may dismiss the complaint, however the reasons for dismissal must be specified in a written report from the Initial Conciliator.
- (4) Upon determination that the complaint should not be dismissed, the Initial conciliator shall schedule the Complaint for mediation and forward a copy of the Complaint to the City Attorney for service as provided herein. Within fourteen (14) business days of receiving the Complaint, the City Attorney or its designee shall prepare a Summons specifying the location, time and date of the mediation and cause a copy of the Complaint and Summons to be served on the respondent. Service shall be made personally by a certified process server, or via Certified Mail, return receipt requested or via statutory overnight delivery. In the event the City Attorney or its designee is unable to have the Complaint and Summons served on the Respondent within fourteen (14) business days, the City Attorney or its designee shall continue to attempt service on a regular basis until such time as the Respondent is served or, if service cannot be effected after reasonable diligence, until sixty (60) calendar days from the date the Complaint is filed. If service cannot be perfected in that time, service may be accomplished by leaving the Complaint posted to the door of the location identified in the Respondents business license records of the City, if any, or at the residence of the Respondent, so that the Notice is clearly visible and notorious. Such posting shall constitute actual notice and service under this section. The City Attorney or its designee shall file written proof that such service was made. The Respondent may waive formal service. A written answer is not required. The complaining party must be given notice of the location, time, and date of the mediation at least fifteen (15) business days in

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advance of the scheduled time. The Initial conciliator shall have the discretion to reschedule the mediation upon the request of either party.

- (5) The case shall be dismissed should the complainant not attend or refuse to participate. The case shall be dismissed should the complainant not attend or refuse to participate. Any mediation hereunder shall be conducted in accordance with procedures to be established by the mediator.
- (6) If, within ten (10) business days of the conclusion of mediation, the complaining party notifies the City Clerk in writing that he or she is dissatisfied with the results, or if the Respondent elects not to participate in mediation, the Initial conciliator shall either dismiss the complaint on the grounds that it is factually or legally unjustified or refer the matter to the Smyrna Municipal Court to go through the standard process for alleged ordinance violations

Sec. 66-46- Penalty- Upon conviction, violators of this ordinance shall be subject to a civil penalty as provided in Section 1-8 (c) of the Smyrna Code of ordinances.

Commented [SC1]: To be added

Sec. 66-47 - Other Remedies. This ordinance may not be construed to limit any other remedies available under local, state, or federal law.

PART II

SEVERABILITY - 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.

passed and duly adopted this _____ day of _____, 2020.

The Honorable Derek Norton
Mayor, City of Smyrna, Georgia

Approved this _____ day of _____, 2020.

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Heather Peacon-Corn
City Clerk, City of Smyrna, Georgia

Approved as to form: _____
Scott A. Cochran, City Attorney

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