

ORDINANCE PROHIBITTING DISCRIMINATION  
IN EMPLOYMENT AND PUBLIC ACCOMMODATIONS

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WHEREAS, this Board has determined that it is in the best interest of the citizens and residents of Buncombe County to enact protections against discrimination that reflect the community's shared values of equality, inclusion, and fair access, and to preserve the health, safety, and welfare of people without regard to certain actual or perceived status or characteristics.

**DEFINITIONS**

*Discrimination* means any difference in treatment based on race, natural hair or hairstyles, ethnicity, creed, color, sex, sexual orientation, gender identity or expression, national origin or ancestry, marital or familial status, pregnancy, veteran status, religious belief or non-belief, age, or disability.

*Employer* means any person employing one or more persons within the County and any person acting in the interest of an employer, directly or indirectly, including an employment agency. "Employer" shall include the County and any County Contractor.

*Gender identity or expression* means having or being perceived as having gender-related identity, expression, appearance, or behavior, whether or not that identity, expression, appearance, or behavior is different from that traditionally associated with the sex assigned to that individual at birth.

*Person* includes one or more individuals, partnerships, associations, organizations, corporations, legal representatives, unincorporated organizations, fiduciaries, and other organized groups of persons.

*Public accommodation (or place of public accommodation)* means any place, facility, store, or other establishment which supplies accommodations, goods, or services to the public or which solicits or accepts the patronage or trade of the public.

**EMPLOYMENT**

**Discrimination in Employment Prohibited.**

It shall be unlawful for any employer, because of the race, natural hair or hairstyles, ethnicity, creed, color, sex, sexual orientation, gender identity or expression, national origin or ancestry, marital or familial status, pregnancy, veteran status, religious belief or non-belief, age, or disability of any person to refuse to hire or otherwise discriminate against that person with respect to hire, tenure, conditions, or privileges of employment, or any matter directly or indirectly related to employment.

## **Exemptions and defenses.**

- (a) Notwithstanding any other provision of this Chapter, it is not unlawful for:
- (1) An employer to employ, admit, classify, or refer any individual on the basis of religion, sex, national origin, age, familial status, or veteran status, in those certain instances where religion, sex, national origin, age, familial status, or veteran status is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.
  - (2) An employer to print or publish, or caused to be printed or published, any notice or advertisement indicating any preference, limitation, specification, or discrimination, based on religion, sex, national origin, age, familial status, or veteran status, in such instances when religion, sex, national origin, age, disability, familial status, or veteran status is a bona fide occupation qualification for employment.
  - (3) A school, college, university, or other educational institution, or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.
  - (4) An employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, so long as the differences are not the result of an intention to discriminate because of race, natural hair or hairstyles, ethnicity, creed, color, sex, sexual orientation, gender identity or expression, national origin or ancestry, marital or familial status, pregnancy, veteran status, religious belief or non-belief, age, or disability.
  - (5) An employer to give and to act upon the results of any professionally developed ability test provided that the test, its administration, or action upon the results is not designed, intended, or used to discriminate because of race, natural hair or hairstyles, ethnicity, creed, color, sex, sexual orientation, gender identity or expression, national origin or ancestry, marital or familial status, pregnancy, veteran status, religious belief or non-belief, age, or disability.
  - (6) An employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of the employer if the differentiation is authorized by the provisions of section 6(d) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. § 206(d)).
  - (7) An employer to refuse to assign or continue to assign an individual to a job involving food handling in any case in which such individual has an infectious or communicable disease that is:
    - a. Transmitted to others through the handling of food;
    - b. Is included on the list developed by the Secretary of the United States Department of Health and Human Services pursuant to section 103(d) of the Americans with Disabilities Act of 1990, (42 U.S.C. §§ 12101, et seq.); and

- c. Cannot be eliminated by reasonable accommodation. Nothing in this subsection shall be construed to preempt, modify, or amend any state, county, or local law, ordinance, or regulation applicable to food handling.
- (b) It is not a violation of this Ordinance for an employer to adopt or administer reasonable policies or procedures, including but not limited to drug testing.
- (c) An employer may:
  - (1) Prohibit the illegal use of drugs and the use of alcohol at the workplace by employees;
  - (2) Require that employees shall not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;
  - (3) Require that employees behave in conformance with the requirements established under the Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 701 et. seq.);
  - (4) Hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior that the entity holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of the employee; and
  - (5) With respect to federal regulations regarding alcohol and the illegal use of drugs, require that employees comply with the standards established in federal regulations of the Department of Defense, the Nuclear Regulatory Commission, and/or the Department of Transportation, if the employees of the employer are employed in an industry subject to the regulations of any such federal agency.
- (d) For the purposes of this Ordinance, a test to determine the illegal use of drugs shall not be considered a medical exam. Furthermore, nothing in this Ordinance shall be construed to encourage, prohibit, or authorize the conducting of drug testing for the illegal use of drugs by job applicants or employees or making employment decisions based on such test results.
- (e) The prohibitions in this Ordinance against discrimination based upon disability shall not be construed to prohibit or restrict:
  - (1) An insurer, hospital, medical service company, health maintenance organization, or any agent, or entity that administers benefit plans, or similar organizations from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or
  - (2) A person or organization covered by this Ordinance from establishing, sponsoring, observing, or administering the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering those risks that are based on or not inconsistent with State law; or
  - (3) A person or organization covered by this Ordinance from establishing, sponsoring, observing, or administering the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance.
- (f) Nothing in this Ordinance shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit which such individual chooses not to accept;

- (g) Nothing contained in this Ordinance shall apply to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.
- (h) With respect to discrimination based on age, it is not unlawful for an employer to take any action otherwise prohibited under this Ordinance:
  - (1) Where the differentiation is based on reasonable factors other than age;
  - (2) Where such practices involve an employee in a workplace in a foreign country, and compliance with those subsections would cause such employer, or a corporation controlled by such employer, to violate the laws of the country in which such workplace is located; or
  - (3) To observe the terms of a bona fide seniority system; or
  - (4) To observe the terms of a bona fide employee benefit plan; or
  - (5) To discharge or otherwise discipline an individual for good cause.
- (i) Nothing in this Ordinance shall be construed to prohibit compulsory retirement of any employee who has attained 65 years of age provided such retirement is part of a practice consistent with a bona fide employee retirement plan.

## **PUBLIC ACCOMODATIONS**

### **Discrimination in Places of Public Accommodations Prohibited.**

It shall be unlawful for any proprietor or their employer, keeper, or manager in a place of public accommodation to deny any person, except for reasons applicable alike to all persons, regardless of race, natural hair or hairstyles, ethnicity, creed, color, sex, sexual orientation, gender identity or expression, national origin or ancestry, marital or familial status, pregnancy, veteran status, religious belief or non-belief, age, or disability, the full enjoyment of the accommodations, advantages, facilities or privileges thereof.

### **Exemptions.**

The provisions of this Section shall not apply to a private club or other establishments not in fact open to the public.

### **Enforcement—Filing of complaint and investigation; Reasonable cause and conciliation efforts; Appeals.**

The Board, in consultation with staff, shall develop a comprehensive process for receiving, investigating, and resolving complaints pertaining to alleged violations of this Ordinance. This process will include efforts at conciliation between the parties. Where an investigation reveals a violation of this Ordinance and conciliation fails, then civil penalties may be imposed upon the offending party as outlined below. This process will be in effect no later than July 1, 2021. The Board, in conjunction with staff, will

undertake educational efforts to inform Buncombe County in general and impacted communities within the county in particular about this ordinance as well as the process for enforcing it.

#### **Penalties.**

Pursuant to G.S. § 153A-123, the county manager, in consultation with county legal services, may choose from the remedies set forth below to enforce the requirements of this chapter when there is a failure to comply with the requirements of this chapter. Those remedies are as follows:

(i) In addition to or in lieu of the other remedies set forth in this chapter, the county manager, or their designee, may issue a citation setting forth a civil penalty of \$100.00. In the case of a continuing violation, each 24-hour period in which the violation continues to exist shall constitute a separate violation. The citation shall be served upon the person violating any of the requirements of this Section by hand delivery or certified mail or by any other means made in accordance with the North Carolina Rules of Civil Procedure. In the event the violator does not pay the penalty within 30 days of service of the citation, the civil penalty shall be collected by the county in a civil action in the nature of debt, which shall not subject the offender to the penalty provisions of G.S. § 14-4.

(ii) In addition to or in lieu of other remedies set forth in this chapter, the county, by and through its county legal services, may seek injunctive relief in the appropriate court.

#### **Compliance with laws.**

Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any existing federal or state law.

#### **Severability.**

Should any provision of this Ordinance be found to be unconstitutional or otherwise impermissible by a court of law, such provision shall be severed from the remainder of the Ordinance, and such action shall not affect the enforceability of the remaining provisions of the Ordinance.

**Effective date.** The provisions of this Ordinance shall go into effect on July 1, 2021.