

A RESOLUTION TO ENACT AN ORDINANCE PROHIBITING DISCRIMINATION IN
PUBLIC ACCOMMODATIONS AND EMPLOYMENT

WHEREAS, Durham County welcomes all people and recognizes the importance of diversity and the importance of all people being free from discrimination based on race, ethnicity, creed, color, sex, sexual orientation, gender identity or expression, national origin or ancestry, marital or familial status, pregnancy, military status, religious belief or non-belief, age, or disability.; and

WHEREAS, Durham County desires to safeguard the rights and opportunities of all persons to be free from discrimination in public accommodations and employment; and

WHEREAS, on March 30, 2017, Section 3 of S.L. 2017-4 went in effect, preempting local governments from enacting and amending ordinances regulating public accommodations and private employment practices; and

WHEREAS, Section 3 of S.L. 2017-4 expired on December 1, 2020; and

WHEREAS, invidious discrimination and the tolerance of invidious discrimination is detrimental to the health, safety, and welfare of the citizens of Durham County and the peace and dignity which Durham County seeks to promote for all of its residents; and

WHEREAS, pursuant to North Carolina General Statute § 153A-121(a), “[a] county may by ordinance define, prohibit, regulate, or abate acts, omissions, or conditions detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the county; and

WHEREAS, pursuant to North Carolina General Statute § 153A-4, “[i]t is the policy of the General Assembly that the counties of this State should have adequate authority to exercise the powers, rights, duties, functions, privileges, and immunities conferred upon them by law. To this end, the provisions of this Chapter . . . shall be broadly construed and grants of power shall be construed to include any powers that are reasonably expedient to the exercise of the power”; and

WHEREAS, in 2020, the United States Supreme Court, in *Bostock v. Clayton County*, held that Title VII’s prohibition on discrimination “because of . . . sex” includes discrimination on the basis of gender identity and sexual orientation; and

WHEREAS, the Supreme Court’s analysis and decision applies equally to other laws prohibiting discrimination on the basis of sex, a fact already recognized by the Federal government in the interpretation of other laws and regulations prohibiting discrimination on the basis of sex; and

WHEREAS, the purpose and intent in enacting this Ordinance is to promote the principles of diversity, inclusion, harmony, and equal treatment for all and thereby the health, safety, and welfare of those who live in, work in, and visit Durham County as well as to promote the peace and dignity of Durham County; and

WHEREAS, the Durham County Board of Commissioners hereby finds and determines that it is in the best interest of the citizens and residents of Durham County to enact this Ordinance.

NOW, THEREFORE, BE IT ORDAINED AND RESOLVED by the Board of Commissioners (the "Board") for the County of Durham, North Carolina (the "County") as follows:

1. The following is hereby adopted as Chapter 15 of the Durham County Code of Ordinances:

Chapter 15. AN ORDINANCE PROHIBITING DISCRIMINATION

ARTICLE I. - IN GENERAL

Secs. 15-1. Title.

This Chapter shall be known and may be cited as the "Non-Discrimination Ordinance of Durham County".

Sec. 15-2. Purpose.

- A. The purpose of this Chapter, and the policy of Durham County, is to promote the equal treatment of all individuals and provide them freedom from discrimination on the basis of race, ethnicity, creed, color, sex, sexual orientation, gender identity or expression, national origin or ancestry, marital or familial status, pregnancy, military status, religious belief or non-belief, age, or disability in employment and access to all places of public accommodation.
- B. This Chapter shall be construed according to the fair import of its terms.
- C. Nothing in this Chapter shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any existing Federal or State law.
- D. Neither filing a complaint with the County, nor anything else in this Chapter, shall toll or otherwise extend the deadlines for filing a complaint with any other State or Federal agency, such as the Equal Employment Opportunity Commission, having jurisdiction over the complaint.
- E. This Chapter does not create a private cause of action.

Sec. 15-3. Applicability; Compliance with Laws

- A. Pursuant to N.C.G.S. 153A-122, this ordinance shall apply within the jurisdictional limits of Durham County and is not applicable within the territorial limits of a city or town, unless a municipal governing board opts in, provided there is agreement to enforcement procedures through an interlocal agreement.

- B. Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any existing federal, state, or local law or either the United States or North Carolina Constitutions, including but not limited to the Free Exercise Clause of the First Amendment.

Sec. 15-4. Severability Clause

In the event any portion of this Ordinance, or the application thereof to any person is declared or adjudged to be invalid or unconstitutional, then such declaration or adjudication shall not affect the remaining provisions of this Ordinance, or its application to other persons; and the Ordinance shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this Ordinance.

Sec. 15-5 Definitions

For the purpose of this chapter, the following definitions shall apply:

- (a) *Conciliation* means attempted resolution of issues raised by a complainant through informal means not involving court process.
- (b) *Discrimination* means any difference in treatment based on a Protected Class as defined herein.
- (c) *Discrimination based on national origin* includes action taken due to the individual having a hairstyle, hair type, or hair texture historically associated with national origin such as, but not limited to, braids, locks, twists, tight coils or curls, cornrows, Bantu knots, and afros.
- (d) *Discrimination based on race* includes action taken due to the individual having a hairstyle, hair type, or hair texture historically associated with national origin such as, but not limited to, braids, locks, twists, tight coils or curls, cornrows, Bantu knots, and afros.
- (e) *Employer* means any person employing one or more persons within Durham County and any person acting in the interest of an employer, directly or indirectly, including an employment agency. Employer does not include the Federal Government, the State of North Carolina, any of their agencies or departments, or any other governmental entity. “Employer” shall include any person contracting with Durham County.
- (f) *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.
- (g) *Military status* means being on active duty in, or in any reserve component of, any branch of the armed forces of the United States, the State of North Carolina, or any other state, or

being a veteran of any such branch of the armed forces. Military status does not include consideration of the characterization of a person's discharge.

- (h) *Person* means a natural person, a corporation, company, partnership, firm, association or other entity with a separate legal existence.
- (i) *Protected class* means race, ethnicity, creed, color, sex, sexual orientation, gender identity or expression, national origin or ancestry, marital or familial status, pregnancy, military status, religious belief or non-belief, age, or disability.
- (j) *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 general public. A public accommodation shall not include a Religious Organization and all of the activities of the Religious Organization, or a non-profit fraternal or social organization which restricts use of facilities and services to members and their guests.
- (k) *Religious Organization* means a church, mosque, synagogue, temple, non-denominational ministry, faith-based mission or faith-based entity that is primarily devoted to the study, practice, or advancement of religion.

Secs. 15-6 to 15-24. – Reserved.

Article II PUBLIC ACCOMMODATIONS

Sec. 15-25 Public Accommodations.

It shall be unlawful for any owner, proprietor, employer, employee, agent, keeper, or manager in a place of public accommodation to deny any person the full and equal enjoyment of the accommodations, advantages, facilities, or privileges thereof because of that person's inclusion within one or more Protected Class.

Secs. 15-26 to 15-44. – Reserved.

ARTICLE III EMPLOYMENT

Sec. 15-45 Employment.

- A. It shall be unlawful for any employer, because of the Protected Class of any person, to fail or refuse to hire, discharge, or otherwise discriminate against that person with respect to tenure, promotion, transfer, compensation, terms, conditions or privileges of employment, or any other matter directly or indirectly related to employment.

- B. An unlawful employment practice is established when the complaining party demonstrates by clear, cogent and convincing evidence that a personal characteristic or the status of the complaining party as a member of a Protected Class was a motivating factor for the employment practice.

Secs. 15-46 to 15-64. – Reserved.

ARTICLE IV CONTRACTING

Sec. 15-65. Contracting.

As a condition of submitting a bid or proposal to Durham County, the bidder or proposer shall submit a certification of compliance with this Ordinance. Failure to submit this certification or falsification of this certification shall be grounds for rejection of the bid or termination of the contract without fault to Durham County.

Secs. 15-66 to 15-84. – Reserved.

ARTICLE V ADMINISTRATIVE

Sec. 15-85. Penalties and Enforcement.

A. Complaints regarding alleged violations of this ordinance should be filed with the General Manager for Health and Well Being for All (General Manager), or such other person designated to administer this ordinance, within One Hundred and Eighty (180) days of the alleged discriminatory act on the complaint form provided by the County. The General Manager, or their designee, shall determine if the complaint falls within the jurisdiction of the County, and if so, shall investigate the complaint and seek information from the respondent (party complained of). If a complaint is factually validated, then the County will offer voluntary conciliation to resolve the dispute between the complainant and the respondent.

B. In addition to or in lieu of other remedies available by law, any person violating any provision of this Article may be subject to an enforcement action brought by the County under G.S. 153A-123(d) and (e) for an appropriate equitable remedy, including but not limited to a mandatory or prohibitory injunction commanding the respondent to correct the conduct prohibited under this Article.

C. This Article does not create and is not intended to create any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against Durham County, its agencies, departments or any other officers, elected officials, or employees or any other person or entity, including respondents.

D. This Article shall not limit the remedies available to any person under state or federal law.

E. Violation of this ordinance does not constitute a criminal offense in accordance with G.S.14-4.

2. This ordinance shall take effect on July 1, 2022.

3. The County Clerk is hereby authorized to make any needed formatting revisions, so long as such revisions do not change the content of the Ordinance, and to file this Ordinance in an appropriately indexed ordinance book subject to public inspection in the Clerk's office.

4. The County Finance Director and County Attorney are hereby instructed to incorporate the provisions of this Ordinance into County contracts and procurement documents where applicable.

5. The General Manager for Health and Well Being for All is instructed to develop appropriate forms and policies to effectuate the provisions and goals of this ordinance. In so doing the General Manager shall be mindful of the applicable exceptions and standards recognized for the existing statutes in this area, such as Title VII of the Civil Rights Act of 1964, or the Americans with Disabilities Act.

6. The County's Chief Human Resources Officer is instructed to review and prepare such revisions as are necessary to the County's Personnel Ordinance and County policies related to Human Resources, to include the protected classes designated in this ordinance.