

ORDINANCE

NO. 2010- _____

AN ORDINANCE To Amend The Code Of The Township Of Lower Merion, adding Chapter 93, To Provide For The Creation of The Lower Merion Township Human Relations Commission, and to Prohibit Discrimination In Housing, Commercial Property, Employment and Public Accommodations Based Upon Race, Color, Religious Creed, Ancestry, Age, Sex, National Origin, Handicap Or Disability, Use Of Guide Or Support Animals Because Of The Blindness, Deafness Or Physical Handicap Of The User Or Because The User Is A Handler Or Trainer Of Support Or Guide Animals, Or Because Of An Individual's Sexual Orientation, Gender Identity Or Gender Expression; Providing Definitions; And Providing Penalties

The Board of Commissioners of the Township of Lower Merion hereby ordains:

Section 1. The Code of the Township of Lower Merion shall be amended by the addition of a new Chapter 93, Human Relations Commission, to provide as follows:

Chapter 93

Human Relations Commission

§ 93.1- Purpose and Declaration of Policy.

- A. In order to ensure that all persons, regardless of race, color, religious creed, ancestry, age, sex, national origin, handicap or disability, use of guide or support animals because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals, or because of a person's sexual orientation, gender identity or gender expression enjoy the full benefits of citizenship and are afforded equal opportunities for employment, housing, commercial property, and the use of public accommodations, it is necessary that appropriate legislation be enacted.
- B. It is hereby declared to be the public policy of Lower Merion Township to foster the employment of all individuals in accordance with their fullest capacities regardless of their race, color, religious creed, ancestry, age, sex, national origin, handicap or disability, use of guide or support animals because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals, or because of a person's sexual orientation, gender identity or gender expression.

- C. It is the intention of this chapter that all persons be treated fairly and equally, and it is the express intent of this chapter to guarantee fair and equal treatment under the law to all people of the Township.
- D. This chapter shall be deemed an exercise of the police power of Lower Merion Township for the protection of the public welfare, prosperity, health and peace of the Township, its residents and the Lower Merion Township community.
- E. No power or duty granted hereunder to the Lower Merion Human Relations Commission is intended to exceed nor shall it be construed as exceeding those powers and duties granted to the Pennsylvania Human Relations Commission by the Pennsylvania Human Relations Act, the Act of October 27, 1955, as amended.

§ 93.2 - Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this subsection. To the extent words and phrases appearing in this chapter are not expressly defined herein, their meaning for purposes of this chapter shall be the same as such words are defined in the Pennsylvania Human Relations Act and such words, if not therein defined, shall be construed consistently with the Pennsylvania Human Relations Act.

- A. **BOARD OF COMMISSIONERS** -- The duly elected Board of Commissioners of Lower Merion Township.
- B. **DISCRIMINATION** -- Any discriminatory act(s) taken by any person, employer, entity, employment agency, or labor organization, with respect to or involving a transaction related to employment, public accommodations, commercial property or housing accommodations, on the basis of a person's race, color, religious creed, ancestry, age, sex, national origin, handicap or disability, use of guide or support animals because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals, or a person's actual or perceived sexual orientation, gender identity or gender expression.
- C. **DISCRIMINATORY ACTS** -- All acts or actions defined in the Pennsylvania Human Relations Act as unlawful discriminatory practices as related to employment, public accommodations, publicly offered commercial property or housing accommodations, when those acts or actions are taken on the basis of a person's race, color, religious creed, ancestry, age, sex, national origin, handicap or disability, use of guide or support animals because of the blindness, deafness or physical handicap of the user, Or Because The User Is A Handler Or Trainer Of Support Or Guide Animals or when those acts or actions are taken on the basis of a person's actual or perceived sexual orientation, gender identity or gender expression.
- D. **EMPLOYER** -- Any person, including the Township, its departments, boards and Commissions, and any other government agency or school district within its

jurisdiction, and any person employing four or more persons within the Township, but except as hereinafter provided, does not include religious, fraternal, charitable or sectarian corporations or associations, except such corporations or associations supported, in whole or in part, by governmental appropriations. The term “employer” with respect to discriminatory practices based on race, color, age, sex, national origin, non-job related handicap or disability, includes religious, fraternal, charitable and sectarian corporations, organizations and associations employing four or more persons within the Township. The term “employer” excludes persons acting in a supervisory capacity unless they are an owner of the entity employing the Complainant.

- E. GENDER EXPRESSION – The manner in which a person's gender identity is communicated to others, through appearance, behavior, or physical characteristics that may be in accord with, or opposed to, one's physical anatomy, chromosomal sex, or sex at birth, and shall include, but is not limited to, persons who are undergoing or have completed sex change.
- F. GENDER IDENTITY -- The gender(s), or lack thereof, a person self-identifies as, whether or not based on biological fact or sexual orientation.
- G. HOUSING ACCOMMODATIONS -- Includes (1) any building, structure, mobile home site or facility, or portion thereof, which is used or occupied or is intended, arranged or designed to be used or occupied as the home residence or sleeping place of one or more individuals, groups or families whether or not living independently of each other; and (2) any vacant land publicly offered for sale or lease for the purpose of constructing or locating thereon any such building, structure, mobile home site or facility. The term "Housing Accommodation" shall not include any personal residence offered for accommodation by the owner or lessee thereof or by his or her broker, salesperson, agent or employee.
- H. PERSON -- One or more individuals, partnerships, associations, organizations, corporations, limited liability entities, legal representatives, trustees in bankruptcy or receivers, including by not limited to any owner, lessor, assignor, builder, manager, broker, salesman, agent, employee, independent contractor, lending institution and the Commonwealth of Pennsylvania, and all political subdivisions, authorities, boards and Commissions thereof.
- I. PUBLIC ACCOMMODATION -- Any accommodation for the provision of food, beverages or lodging, resort or amusement which is open to, accepts or solicits the patronage of the general public, but shall not include any accommodations which are in their nature distinctly private.
- J. SEXUAL ORIENTATION -- Actual or perceived homosexuality, heterosexuality and/or bisexuality.
- K. TOWNSHIP -- The Township of Lower Merion, County of Montgomery, Commonwealth of Pennsylvania.

§ 93.3 - Unlawful Practices.

- A. Discrimination in housing, publicly offered commercial property transactions, employment or public accommodations is prohibited under this chapter.
- B. Retaliation against any individual because such individual has opposed any practice forbidden by this chapter, or because such individual has made a charge, testified or assisted in any manner in any investigation, proceeding or hearing under this chapter is prohibited under this chapter.
- C. Aiding, abetting, inciting, compelling or coercing the doing of any act declared by this chapter to be an unlawful practice, or obstructing or preventing any person from complying with the provisions of this chapter is prohibited under this chapter.

§ 93.4 - Exception.

Notwithstanding any other provision of this chapter, it shall not be an unlawful practice for a religious corporation, organization or association, not supported in whole or in part by governmental appropriations, to refuse to hire, employ, house or otherwise accommodate an individual on the basis of actual or perceived sexual orientation, gender identity or gender expression, nor shall an employer be prevented from enforcing a dress code which is reasonably related to the business or profession being conducted.

§ 93.5 - Establishment of Human Relations Commission.

- A. Pursuant to § 12.1 of the Pennsylvania Human Relations Act, there is hereby established a Human Relations Commission in and for the Township of Lower Merion (hereinafter referred to as the "Lower Merion Township Human Relations Commission" or the "Commission").
- B. The Commission shall consist of 7 members who shall serve overlapping terms of three years each. All members of the Commission shall be appointed by the Board of Commissioners. Members shall be residents of Lower Merion Township. No member of the Commission shall hold any office in any political party. Members of the Commission shall serve without compensation with respect to any and all duties performed under this chapter but may be reimbursed reasonable expenses incurred in the performance of their duties, as approved by the Board of Commissioners.
- C. One of the Commission's members shall be appointed by the members thereof as Chairperson. The Chairperson will be responsible for setting Commission meetings, coordinating with the Township Manager regarding received complaints and answers, and generally ensuring that the duties of the Commission are fulfilled. The Chairperson may delegate responsibility for Commission duties to specific Commissioners.
- D. The Commission shall have jurisdiction over Unlawful Practices committed within the Township of Lower Merion.

- E. The Board of Commissioners hereby grants to the Commission, with respect to Unlawful Practices as defined herein, all of the powers necessary to the execution of its duties as set forth below.
- F. The Commission shall be empowered to promulgate such additional procedures to those set forth herein as it determines to be necessary or desirable to implement the intent of this chapter subject to review and approval of the Board of Commissioners.

§ 93.6 - Procedures

- A. Filing a complaint.
 - (1) Any person(s) claiming to be aggrieved by an Unlawful Practice may make, sign and file a verified complaint alleging violations of this chapter, which shall include the following information:
 - (a) The name and address of the aggrieved person(s);
 - (b) The name and address of the person(s) alleged to have committed the prohibited practice;
 - (c) A concise statement of the facts, including pertinent dates, constituting the alleged Unlawful Practice;
 - (d) If applicable, the address and a description of any Housing Accommodation or commercial property which is involved; and
 - (e) Such other information as may be required by the Commission.
 - (2) Complaints may be filed in person or by mail at the Township Manager's office. All complaints must be received by the Township Manager's office within 180 days of the alleged Unlawful Practice, or the complaint will not be considered timely.
 - (3) The Township Manager shall record the date and time of receiving the complaint and shall immediately forward a complete copy to the Chairperson of the Lower Merion Township Human Relations Commission.
- B. Notification and answer.
 - (1) Within 30 days of its receipt of a complaint, the Human Relations Commission shall determine if it has jurisdiction hereunder to hear the complaint. If the Commission determines that it does not have such jurisdiction, it shall dismiss the complaint and notify the aggrieved party. If the Commission determines it has jurisdiction to hear the complaint, it shall proceed as follows:

- (a) Send a copy of the complaint to the person(s) charged with a Unlawful Practice (the "Respondent") and to the Pennsylvania Human Relations Commission; and
 - (b) Send a notice to the person(s) aggrieved (the "Complainant"), informing them that the complaint has been received. If the complaint alleges discrimination on a basis proscribed under state law, the notice shall advise the Complainant that the complaint is being cross-filed with the Pennsylvania Human Relations Commission.
 - (c) If the complaint alleges discrimination on a basis proscribed under federal law, the notice to the Complainant shall also inform of the right to file with the Federal Equal Employment Opportunity Commission.
- (2) The Respondent shall file with the Township Manager a written verified answer to the complaint within 30 days of Respondent's receipt of the complaint from the Township. It shall be conveyed by the Township Manager to the Chairperson of the Lower Merion Township Human Relations Commission within 10 days of its receipt by the Township Manager. The Commission shall promptly send a copy of the answer to the Complainant.

C. Mediation.

- (1) After the answer has been received, the Commission shall, within 15 days, invite the parties to voluntarily participate in the mediation of their dispute. The parties shall respond to the invitation to mediate within 15 days of being invited to mediate. Mediation shall be conducted in accordance with procedures promulgated by the Commission and approved by the Board of Commissioners.
- (2) If mediation is elected by the parties, the parties may jointly select a mediator, in which case they shall be jointly responsible for all financial costs and expenses associated with mediation and may allocate the costs of mediation as they agree. If the parties do not jointly select a mediator, or agree to allocation of costs pursuant to approved procedures of the Commission, the Chairperson of the Commission shall select a mediator, who may be either a member of the Commission or a volunteer from the community.
- (3) The parties shall notify the Commission as to whether the mediation successfully resolved the complaint. Mediation proceedings shall otherwise be confidential. Neither the results thereof nor any record made in connection therewith shall be made public unless agreed to in writing by both parties to the dispute.

- (4) Dismissal of the Complaint Following Mediation.
 - (a) If the mediation has successfully resolved the complaint, the Commission shall promptly notify the parties that it has dismissed the complaint.
 - (b) If the mediation has not successfully resolved the complaint, and if the complaint alleges a violation of this Ordinance which is also proscribed under the Pennsylvania Human Relations Act, the Commission shall notify the parties that the complaint has been dismissed, and refer the complaint to the Pennsylvania Human Relations Commission for further proceedings.

D. If the mediation has not successfully resolved the complaint, and only if the complaint alleges a violation of this Chapter which is not otherwise proscribed under the Pennsylvania Human Relations Act and over which the Pennsylvania Human Relations Commission does not have jurisdiction, the Commission shall proceed as follows:

- (1) Investigation. The Commission shall, in a timely fashion, investigate the allegations of an Unlawful Practice set forth in the complaint by designating an investigator, who may be a member of the Commission. The Commission may, in the conduct of such investigation and upon review and approval by the Township Solicitor, issue subpoenas to any person charged with an Unlawful Practice, commanding such person to furnish information, records or other documents, as necessary to assist in the Commission's investigation.
- (2) Finding of No Cause. If it shall be determined after the Commission's investigation that there is no probable cause for the allegations of the complaint, the Commission shall cause to be issued and served upon the parties written notice of such determination and dismissal of the complaint. This notice shall inform the person aggrieved that he/she has the right to pursue the matter in court.
- (3) Conciliation. If the Commission, after investigation, determines that probable cause exists for the allegations of the complaint, the Commission shall immediately endeavor to eliminate the Unlawful Practice complained of by persuasion, conference and conciliation. If it determines that conciliation may be a useful approach, the Commission shall designate one of its members as a conciliator, who shall undertake conciliation following approved procedures of the Commission.

- (4) Public Hearing
- (a) If the Commission finds it is not possible to eliminate the Unlawful Practice by persuasion, conference and conciliation, the Commission, shall cause to be issued and served a written notice scheduling a public hearing before the Commission at a time and place to be specified in such notice.
 - (b) The Commission may designate one or more of its members to preside at such a public hearing or it may, at its election, conduct such hearing en banc. Any Commission member who acted as a mediator, investigator or conciliator shall not participate in such public hearing except as a witness to present the results of the investigation.
 - (c) At the public hearing, both the Complainant and the Respondent shall be given the opportunity to appear, with or without counsel, to provide testimony and submit evidence. Formal rules of evidence shall not apply, but irrelevant or unduly repetitious evidence may be excluded by the Commission in its discretion. In addition, both the Complainant and the Respondent may introduce the testimony of additional witnesses and may submit documentary evidence.
 - (d) At the public hearing, the Commission shall be represented by the Township Solicitor. A court reporter shall make a formal record of the proceedings.
- (5) Findings and Award. If upon all the evidence at the hearing the Commission shall find that a Respondent has engaged in or is engaging in any Unlawful Practice as defined in this chapter, the Commission shall state its findings of fact and shall issue and cause to be served on such Respondent an order requiring such Respondent to cease and desist from such Unlawful Practice and to take such affirmative action, including, but not limited to: compensation for loss of work in matters involving the Unlawful Practice, hiring, reinstatement or upgrading of employees, with or without back pay, admission or restoration to membership in any respondent labor organization, the making of reasonable accommodations, or selling or leasing specified Housing Accommodations or publicly offered commercial property upon such equal terms and conditions as was available to other persons at the time of the Unlawful Practice, and any other verifiable, reasonable out-of-pocket expenses caused by such unlawful discriminatory practice. Back pay liability shall not accrue from a date more than three years prior to the filing of a complaint charging violations of this chapter.

- (6) Civil Penalties. The Commission's order may also assess a civil penalty against the Respondent in an amount not exceeding ten thousand dollars (\$10,000) with respect to all matters alleged in the Complaint.
- (7) Attorneys' fees.
 - (a) If, upon consideration of all the evidence at the public hearing the Commission finds that a Respondent has engaged in or is engaging in any Unlawful Practice, the Commission may award reasonable attorneys' fees and costs to the prevailing Complainant. Such attorneys' fees and costs may include reasonable time for representation before the Commission at the public hearing under this chapter but shall not include time incurred in the filing of the complaint or appearances before the Commission or mediator in the mediation or conciliation process.
 - (b) If, upon all the evidence at the hearing, the Commission finds that a Respondent has not engaged in or is not engaging in any Unlawful Practice and that the complaint was brought in bad faith, the Commission may award attorneys' fees and costs to the prevailing Respondent.
 - (c) In the event that a claim proceeds to court, the same rights and remedies shall be available.
- (8) Finding of No Discrimination. If upon all the evidence the Commission shall find that a Respondent has not engaged in any unlawful Discriminatory Act, the Commission shall state its findings of fact and shall issue and cause to be served on the parties an order dismissing the complaint as to such Respondent.
- (9) Appeal. Any order of the Commission may be appealed to the Court of Common Pleas of Montgomery County within 60 days of its date as provided by law.
- (10) Enforcement. When the Commission has heard and decided any complaint brought before it, enforcement of its order shall be initiated by the filing of a petition in court, together with a transcript of the record of the hearing before the Commission, and issuance and service of a copy of said petition as in proceedings in equity.

§ 93.7 - Private Right of Action.

Having exhausted the administrative remedies set forth herein, an aggrieved person shall have the right to pursue any rights or causes of action at law or in equity to which such person may be entitled. Remedies available shall include those remedies set forth in Section 93.6(D)(5), (6) and (7) of this Chapter.

Section 2. Nothing in this Ordinance shall be construed to affect any suit or proceedings in any Court, any rights acquired or liability incurred, any permit issued, or any cause or causes of action existing under the Township's Code of Ordinances prior to the adoption of this amendment.

Section 3. The provisions of this Ordinance are severable, and if any section, sentence, clause, part, or provision thereof shall be held illegal, invalid, or unconstitutional by any Court of competent jurisdiction, such decision of this court shall not affect or impair the remaining sections, sentences, clauses, parts or provisions of this ordinance. It is hereby declared to be the intent of the Board that this ordinance would have been adopted if such illegal, invalid, or unconstitutional section, sentence, clause, part, or provision had not been included herein.

Section 4. This Ordinance shall take effect and be in force from and after its approval date as required by law.

Approved by the Board this day of , 2010.

BOARD OF COMMISSIONERS OF THE
TOWNSHIP OF LOWER MERION

Bruce D. Reed, President

ATTEST:

Eileen R. Trainer, Secretary