

**AN ORDINANCE**

**NO. 3976**

**AN ORDINANCE To Amend The Code Of The Township Of Lower Merion By The Adoption Of Chapter A181, Human Relations Commission: Rules And Regulations; Providing For The Construction Of The Regulations And For The Definition Of “Employer”; Providing For The Organization Of The Human Relations Commission Including Its Membership, Officers, Actions, Meetings, Administrative Assistance And Records; Providing For Its Actions And Proceedings, Including The Filing Of Complaints And The Processing Thereof, The Filing Of Answers To Complaints And The Processing Thereof, Mediation, Investigation, Findings And Public Hearings; And Providing For Appeals And Enforcement.**

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 A181, Human Relations Commission: Rules and Regulations, to provide as follows:

**CHAPTER A-181, HUMAN RELATIONS COMMISSION: RULES AND REGULATIONS**

**Authority**

These Rules are issued under Chapter 93 of the Lower Merion Township Code of Ordinances, unless otherwise noted.

**Article I – General Provisions**

**§ A181-1 Applicability of Rules and Regulations.**

These general rules and regulations are applicable to the activities and proceedings before the Lower Merion Township Human Relations Commission (hereinafter “HRC”) as established under Chapter 93 of the Lower Merion Township Code.

**§A181-2 Construction.**

This chapter shall be construed liberally for the implementation and enforcement of the Lower Merion Human Relations provisions of the Lower Merion Township Code (hereinafter “HRC Code”).

**§A181-3 Definitions.**

Unless otherwise stated herein, all words and phrases used in these rules and regulations shall have the meanings as indicated in Section 93-2 of the Lower Merion Township Code.

A. Employer: Section 93.2 of the HRC Code defines the term “Employer” to exclude an individual supervisor from the definition of Employer, unless such supervisor is also the owner of the entity employing the Complainant. Specifically, the language of Section 93.3 C defining an Unlawful Practice as the “aiding and abetting...” shall not be interpreted to impose liability on individual supervisors, regardless of how such language is interpreted under Pennsylvania state law.

B. Employer: Under all circumstances, the term “Employer” is intended to apply to employers with no less than four employees and shall be so construed.

**Article II – Organization of The Human Relations Commission**

**§A181-4 Composition.**

A. The HRC shall consist of 7 persons who shall be appointed by the Township Board of Commissioners pursuant to Section 93-5 of the HRC Code.

B. Any vacancy occurring in the HRC for any reason whatsoever shall be filled by the Board of Commissioners for the unexpired term within a period as required by the policy outlined by the Board of Commissioners.

C. Each member of the HRC, before performing any duties of his/her office, shall take an oath or affirmation to support the Constitution of the United States and of the Commonwealth of Pennsylvania and to perform his/her duties with fidelity.

**§A181-5 Officers of the HRC.**

A. The HRC shall organize annually by electing one of its members as its Chairperson, one as Vice Chairperson, and one as Secretary, with terms to run concurrently with the date on which such Commissioner began his or her term on the HRC. A one-year term as an officer will expire on the anniversary of the date such Commissioner began to serve the HRC.

B. The Chairperson, or in his/her absence the Vice Chairperson, shall preside at all meetings of the HRC and shall perform any duties required by law or these rules and regulations.

C. The Vice Chairperson shall perform any functions of the Chairperson in his/her absence and any other function delegated by the Chairperson or assigned by the Township Board of Commissioners.

D. The Secretary shall carry on at the direction of the HRC all official correspondence of the HRC and send out all notices required by law and these rules and regulations, with assistance from the Township Manager's office, and perform all other duties delegated by the Chairperson.

**§A181-6 Actions of the HRC.**

- A. Four members of the HRC shall constitute a quorum.
- B. The HRC may create subcommittees as needed to perform duties and functions of the HRC, which subcommittees shall have discretion to meet as often as necessary to accomplish their objectives. Such subcommittees shall present their work to the full HRC for review and approval, and if necessary shall present their work to the Township Board of Commissioners for final approval thereafter.

**§A181-7 Meetings.**

- A. Meetings shall be held monthly by the HRC or as otherwise determined necessary by the HRC. Meetings may also be held at the call of the Chairperson or at the call of three members of the HRC.
- B. The HRC shall have the discretion to determine whether meetings shall be open to the public when not specifically required by law or these rules and regulations.
- C. The Secretary of the HRC shall give the Township Manager and each member of the Commission at least 72 hours' notice of each and every meeting of the Commission.

**§A181-8 Administrative Assistance.**

- A. The Township shall furnish the HRC with such supplies and clerical assistance as may be necessary for the HRC to fulfill its duties.
- B. In addition, the HRC, upon consultation with the Township Manager, may utilize the Township Solicitor.
- C. The HRC may request the assistance of the elected and appointed officials of the Township to assist the HRC with all reasonable and appropriate efforts.

**§A181-9 Provisions Continued. Amendment of Rules and Regulations.**

These rules and regulations shall continue in force and shall not be annulled, amended, or added to other than by operation of law. Subject to review by the Township Manager and approval by the Township Board of Commissioners, the HRC may amend, revise, void or replace these rules and regulations for any reason by action of a majority of the HRC at any properly convened meeting of the HRC.

**§A181-10 Minutes and Records.**

- A. The HRC shall keep minutes of its proceedings and other official action for such period as may be required by law.
- B. A representative of the Township Manager’s office shall, whenever possible, attend HRC Meetings and draft the minutes. After each meeting, the minutes shall be circulated for review by all members of the HRC.
- C. Minutes of prior meetings shall be distributed to members of the HRC in advance of the next regularly scheduled meeting, at which time the minutes will be amended and/or approved by the HRC.

**Article III –Actions and Proceedings**

**§A181-11 Complaints.**

Any person(s) claiming to be aggrieved by an Unlawful Practice may commence a proceeding hereunder by filing a verified Complaint form with the HRC.

- A. Time of Filing Complaint. The Complaint shall be filed within 180 days from the occurrence of the alleged Unlawful Practice.
- B. Content. Complaints shall be submitted on the Complaint forms provided by the HRC and available on the HRC web site and set forth:
  - 1. The name, address, and phone number of the person claiming to be aggrieved who shall be designated as the Complainant.
  - 2. The name and address of the person(s) or entity (ies) alleged to have committed the practice complained of, who will be designated as the Respondent.
  - 3. A concise statement of facts, including pertinent dates, constituting the alleged Unlawful Practice(s).
  - 4. If applicable, the address and description of any housing, public accommodation or commercial property involved.
- C. Where to File. Complaints, Answers, and any other documents related to an action under the HRC Code shall be filed in person or mailed to the HRC at the Lower Merion Township Manager’s Office address.

1. When received by the Township Manager, any such document shall be time-stamped to reflect the date received, given a docket number, and then forwarded to the HRC Chairperson.
2. Docket numbers for complaints shall be assigned based on the year and number of that complaint for each year. For example, HRC 2011-001 would be the first docket number for the year 2011.

D. Procedure

1. Upon receiving the Complaint, the Township Manager shall send the individual or entity filing the Complaint a notice which includes the following information:

**IMPORTANT NOTICE:**

YOUR FILING OF A COMPLAINT WITH THE LOWER MERION HUMAN RELATIONS COMMISSION *DOES NOT PROTECT* YOUR RIGHTS UNDER PENNSYLVANIA OR FEDERAL LAW REGARDING CLAIMS FOR DISCRIMINATION IN EMPLOYMENT, HOUSING OR PUBLIC ACCOMODATIONS. THE LOWER MERION HUMAN RELATIONS COMMISSION IS NOT AUTHORIZED TO FILE A COMPLAINT WITH ANY OTHER AGENCY ON YOUR BEHALF.

TO PROTECT YOUR RIGHTS UNDER PENNSYLVANIA OR FEDERAL LAW REGARDING CLAIMS FOR DISCRIMINATION IN EMPLOYMENT, HOUSING OR PUBLIC ACCOMMODATION YOU MUST ALSO FILE A COMPLAINT WITH THE AGENCY OR AGENCIES THAT HANDLE THOSE KINDS OF COMPLAINTS UNLESS YOUR COMPLAINT INVOLVES A CLAIM THAT IS BASED *ONLY* ON DISCRIMINATION BY REASON OF SEXUAL ORIENTATION OR GENDER IDENTITY OR EXPRESSION.

ATTACHED IS A LIST OF THE STATE AND FEDERAL AGENCIES WHERE COMPLAINTS OF DISCRIMINATION IN EMPLOYMENT, HOUSING AND PUBLIC ACCOMMODATION **NOT** BASED ON SEXUAL ORIENTATION OR GENDER IDENTITY OR EXPRESSION MAY BE FILED TO PROTECT YOUR CLAIM. THIS LIST IS NOT EXHAUSTIVE, AND *YOU ALONE* ARE RESPONSIBLE FOR DETERMINING WHERE TO FILE SUCH COMPLAINTS TO PROTECT YOUR INTERESTS.

2. The Township Manager shall, to the extent possible, keep a current list of agencies for the filing of complaints for violation of Federal and/or Pennsylvania employment housing or accommodations laws and provide that list to anyone who requests it.
3. After recording the date of receiving the Complaint, the Township Manager shall forward a complete copy of the Complaint to the HRC Chairperson immediately. Within 30 days of its receipt of a Complaint,

the HRC Chairperson (or his/her delegate) shall determine if the HRC has jurisdiction over the Complaint. If no jurisdiction exists, the Complainant will be so notified.

a. If it cannot be determined from the face of the Complaint whether the HRC has jurisdiction, the Chairperson may ask for additional information to be gathered to make that determination. Complaints that are not verified or that do not otherwise fully conform with the requirements set forth herein may be rejected, in the HRC's discretion, if the nonconformity is not remedied within a reasonable amount of time after notice to Complainant.

b. Within 10 days of determining that jurisdiction exists, the HRC shall send a notice to the person(s) aggrieved (the "Complainant"), informing them that the Complaint has been received and preliminarily reviewed for compliance with the HRC Code and these regulations.

c. If it is determined that the HRC does not have jurisdiction, the Township Manager will send notice to the Complainant that the HRC declines jurisdiction and reiterating the notice set forth above in paragraph 1 of this section.

4. The HRC shall also send a copy of the Complaint to the person(s) charged with an Unlawful Practice (the "Respondent") within thirty days (30) of the determination that the HRC has jurisdiction over the complaint. Such notice will be sent by a method which shows proof of receipt by Respondent.

E. Amendments. The Complaint may be amended at any time prior to a public hearing before the HRC with approval from the HRC. The Complaint may be amended to cure technical defects or omissions, to clarify or amplify allegations made therein, or to add material allegations which are related to, or grow out of, the subject matter of the original Complaint, and these amendments shall relate back to the original filing date of the Complaint. Any amendments to the Complaint or Answer must be served upon all other parties.

#### **§A181-12 Answers of Respondent(s) and subsequent filings in the case.**

Filings subsequent to the Complaint shall contain the caption which shall set forth the name(s) of the Complainant, the name(s) of the Respondent, the docket number of the action, and the name of the pleading or motion.

A. Time of filing Answer. Within 30 days of Respondent's receipt of the Complaint from the HRC, the Respondent shall file a verified written Answer with the HRC, which Answer shall be filed in accordance with the procedures set forth in Section A181-11 (C)

above for the filing of Complaints.. Upon written request of the Respondent, the HRC Chairperson (or his or her delegate) may grant an extension of not more than 30 days in which to file the Answer.

B. Content. The Answer shall be so drawn as to fully and completely advise the parties and the HRC as to the nature of all defenses, shall admit or deny each averment of fact with specificity, and shall state clearly all facts relied upon. Answers shall include the following:

1. The name, address and phone number of the Respondent;
2. If applicable, the titled owner of any housing, public accommodation or commercial property involved;
3. The factual and/or legal basis of any challenge by Respondent to the jurisdiction of the HRC.

C. The HRC shall promptly send a copy of the Answer to the Complainant.

D. The Answer may be amended at any time prior to a public hearing before the HRC with approval from the HRC. The Answer may be amended to cure technical defects or omissions, to clarify or amplify facts set forth therein, or to add additional facts and defenses which are related to, or grow out of, the subject matter of the original Answer and Complaint, and these amendments shall relate back to the original filing date of the Answer.

E. Failure to Answer. If the Respondent fails to respond to the Complaint in a timely manner, the HRC may begin to investigate and reach a determination in the case without input from the Respondent. Should a probable cause finding result from such an investigation, the Complainant may then request a public hearing in order to pursue damages.

### **§A181-13. Mediation.**

After the Answer has been received, the HRC shall, within 15 days, invite the parties in writing to participate voluntarily and at no expense in the mediation of their dispute. The parties shall respond to the invitation to mediate within 15 days of being invited.

A. The HRC shall assemble a list of qualified mediators, establishing minimum qualifications in training and requiring some background in employment, housing, and/or public accommodations issues. A member of the HRC may serve as a mediator.

1. In the event a member of the HRC is chosen to mediate, such member shall not act as an investigator or hearing examiner in the same case for the HRC.

2. Mediators chosen for the panel will employ a facilitative method to resolving disputes.
- B. The HRC shall select a mediator for the parties from a list of qualified pro bono mediators. There will be no charge to parties for the mediator.
- C. If resolution is reached via mediation, the Mediator will convey this information in a form to the HRC, stating only whether the matter was resolved.
1. The Mediator shall have the parties enter into a Mediation Stipulation and provide that document to the HRC.
  2. All mediation proceedings are strictly confidential and no settlement terms can be made public. Neither the results thereof nor any Mediation Stipulation or any record made in connection therewith shall be made public unless agreed to in writing by both parties to the dispute.
  3. If the mediation resolves the Complaint, a form will be issued to all parties stating that the Complaint is dismissed.
- D. If no resolution is reached, a form will be issued to all parties setting forth the next steps in the process.
1. For Complaints that allege discrimination on a basis prohibited under state and/or federal law, the case will be dismissed before the HRC and Complainant shall be advised that the HRC cannot process his/her claim any further but that Complainant may pursue his/her claim before the PHRC, the EEOC, HUD and/or DOJ CRD, as applicable and if it is not time-barred.
  2. For Complaints that allege discrimination on the basis of sexual orientation, gender identity, or gender expression the next steps will be determined by the HRC and shall involve investigation of the Complaint if the Complainant wants to pursue it further.
- E. If the parties fail to mediate within ninety (90) days, the HRC may start a full investigation of the Complaint.

#### **§A181-14 Investigation.**

In the event that mediation fails to resolve a Complaint, the HRC shall, in timely fashion, investigate the allegations of an Unlawful Practice based on sexual orientation, gender identity, or gender expression set forth in the Complaint.



- A. The Chairperson shall designate a member or members of the HRC to investigate the Complaint. The investigation may include: interviewing the parties and witnesses, requesting production of records, documents or other information.
- B. Subpoenas. The designated investigator(s) may request the issuance of subpoenas to any person commanding such person to furnish information, records or other documents as necessary to assist in the HRC investigation.
1. Such requests will be referred to the Township Solicitor, who will review the request to determine whether the information, records or other documents are reasonable in scope and will not unreasonably burden the individual to whom the subpoena is to be issued.
  2. If any person shall refuse or neglect to obey any subpoena, the Township Solicitor, may apply by petition to the Court of Common Pleas of Montgomery County to enforce its subpoena, and may further move the Court to impose a fine sufficient to reimburse the Township for its legal fees incurred to secure compliance.
  3. If the recipient of a subpoena shall fail to comply with a Court Order to respond to an HRC subpoena, such defaulting party may be held in contempt of court and sanctions may be imposed as the Court may allow.

**§A181-15 Findings of No Cause.**

If it shall be determined by the designated investigator(s) after investigation that there is no probable cause for the allegations of the Complaint, there shall be issued and served upon the parties written notice of such determination and dismissal of the Complaint. This notice shall inform the parties that Complainant has the right to pursue the matter in Montgomery County Court of Common Pleas within 60 days.

**§A181-16 Finding of Probable Cause.**

If the designated investigator(s) determine(s), after investigation, that probable cause exists for the allegations of the Complaint, there shall be issued and served upon the parties written notice of such determination.

- A. After issuance of a probable cause finding, the HRC shall endeavor to eliminate the Unlawful Practice by persuasion, conference and conciliation.
- B. If it is determined by the Chairperson that both Complainant and Respondent are willing to participate and that a return to mediation would be helpful, the HRC may again provide a Mediator to assist the parties in a resolution.
1. If the Mediator who assisted earlier in the case is available, he/she may be asked to assist. If that person is unavailable or if the parties believe a new

mediator would be more helpful, another Mediator will be selected by the Chairperson.

2. Such mediation efforts will be conducted as set forth above in Section A181-13 and all such mediation efforts will be kept confidential.

C. If the efforts at conciliation and mediation do not resolve the dispute, and if the Complainant wishes to pursue the Complaint, the HRC shall schedule a public hearing in accordance with the procedures set forth in Article IV below.

### **§A181–17 Public Hearing.**

A. The HRC shall issue and serve a written notice on all parties scheduling a public hearing before the HRC at a time and place to be specified. Such notice will be sent in a manner to allow proof of receipt. The HRC may establish such procedures as will facilitate the conduct of the public hearing, including, but not limited to, pre-hearing conferences, parties' exchange of evidence and witness lists, use of stipulations, and procedural deadlines, and other submissions by parties.

B. The HRC Chairperson shall select a hearing panel comprised of one or three HRC members for the public hearing (hereinafter "Hearing Panel"). All rulings and determinations shall be by majority vote.

1. Any HRC member who acted as a mediator, investigator, or conciliator in the case shall not participate on the Hearing Panel.
2. If the Hearing Panel should deem it necessary to seek legal advice or support, the Township Solicitor shall be available for these purposes.

C. The public hearing will be conducted as follows:

1. Both Complainant and Respondent shall be given the opportunity to appear, with or without counsel, to testify and present evidence.
2. Testimony shall be taken under oath. Formal rules of evidence shall not apply, but irrelevant or unduly repetitious evidence may be excluded by the Hearing Panel in its discretion.
3. Both Complainant and Respondent may introduce testimony of witnesses and may submit documentary evidence. All witnesses presented will be subject to questioning by the opposing party or his/her counsel.
4. If objections to the admission or exclusion of testimony or other evidence are made, the grounds relied upon shall be stated briefly. Formal exceptions are not necessary and will not be taken to rulings thereon.

5. Prepared expert testimony will be governed by 1 Pa. Code §35.166 except that the period of 20 days provided therein will be reduced to 10 days.
6. Subpoenas may be issued for the hearing to command the presence of a witness or to compel the production of evidence as set forth above in §A181-14 pertaining to subpoenas.
7. Upon written request, in advance of the hearing date, a public hearing may be rescheduled by the Hearing Panel, for good cause shown by either of the parties or the Hearing Panel.
8. If a party fails to appear at a public hearing, pursuant to a written notice issued as set forth above, proof of the notice shall be entered on the record. If the Hearing Panel determines that there are no legitimate unforeseen circumstances to justify a continuance, the hearing will proceed without the party.
9. At the public hearing, a court reporter shall make a formal record of the proceedings
10. In conducting the hearing, the Hearing Panel shall determine whether sufficient evidence has been presented to support a finding that the Respondent has engaged in, or is engaging in, an Unlawful Practice.

D. Findings of Fact and Conclusions. The Hearing Panel shall set forth its findings of fact and conclusions of law in writing, which shall be presented to the HRC for final action within sixty (60) days after receipt of a transcript of the hearing.

1. If no Unlawful Practice is found, the HRC shall issue and serve on all parties its findings of fact and conclusions of law with its Order dismissing the Complaint.
2. If a finding of Unlawful Practice is found, the HRC shall issue and serve on Respondent its findings of fact and conclusions of law together with an Order requiring Respondent to cease and desist from such Unlawful Practice and provide such other relief available under the law.

E. Damages and Remedies for the Complainant include, but are not limited to the following:

1. Compensation for loss of work in employment matters involving an Unlawful Practice; however, back pay shall not accrue from a date more than 3 years prior to the filing of a Complaint charging violations hereunder.

2. Hiring, reinstatement, or upgrading of employees with or without back pay, where appropriate;
3. Admission or restoration to membership in any Respondent labor organization;
4. The selling or leasing of specified housing accommodations or publicly offered property upon such equal terms and conditions as was available to other persons at the time of the Unlawful Practice;
5. And any other verifiable reasonable out-of-pocket expenses caused by such Unlawful Practice;

**F. Civil Penalties and Attorney Fees.**

1. **Civil Penalties.** The HRC may also assess a civil penalty against the Respondent in an amount not exceeding ten thousand (\$10,000) with respect to all matters alleged in the Complaint.
2. **Attorney Fees for Complainant.** The HRC may award attorneys' fees and costs to a prevailing Complainant if it finds that the Respondent has engaged in or is engaging in any Unlawful Practice. No attorneys' fees shall be reimbursed for any time spent by an attorney assisting a Complainant in filing a Complaint or at any time during the mediation or investigation by the HRC.
3. **Attorney Fees for Respondent.** If the HRC 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 HRC may award attorneys' fees and costs to the prevailing Respondent.

**Article IV – Appeals and Enforcement.**

**§A181-18 Appeals.**

Any final Order of the HRC may be appealed to the Court of Common Pleas of Montgomery County within 60 days of its date.

**§A181-19 Enforcement.**

Enforcement of any Order issued by the HRC shall be initiated by the Township Solicitor by the filing of a petition for enforcement or injunction with the Montgomery County Court of Common Pleas.

**§A181-20 Private Right of Action.**

After exhausting any administrative remedies afforded hereunder, a Complainant shall have the right to pursue any rights or causes of action at law or equity to which such person may otherwise be entitled. Remedies available shall include those set forth in the HRC Code at sections 93.6(D)(5)-(7).

**Article V – Continuation of Provisions; when effective;**

**§A181-21 When effective.**

These rules and regulations shall become effective upon their approval by the Lower Merion Township Board of Commissioners.

**Section 2.** Nothing in this Ordinance or in the Code of the Township of Lower Merion, as hereby amended, 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 said Code 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 as required by law.

Approved by the Board this      day of      , 2012.

BOARD OF COMMISSIONERS OF THE  
TOWNSHIP OF LOWER MERION

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Elizabeth S. Rogan, President

ATTEST:

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Eileen R. Trainer, Secretary