

AN ORDINANCE

AMENDING AND REENACTING APPROVING AMENDMENTS TO CHAPTER 2 (ADMINISTRATION) OF THE CODE OF THE CITY OF CHARLOTTESVILLE (1990), AS AMENDED, ARTICLE XV (HUMAN RIGHTS) SEC. 2-431 (UNLAWFUL DISCRIMINATION PROHIBITED); SEC. 2-432 (HUMAN RIGHTS COMMISSION); SEC. 2-433 (ROLE OF THE HUMAN RIGHTS COMMISSION); SEC. 2-437 (DUTIES AND RESPONSIBILITIES- INVESTIGATION OF INDIVIDUAL COMPLAINTS AND ISSUANCE OF FINDINGS); AND SEC. 2-439.1 (ENFORCEMENT AUTHORITY-THE ROLE OF THE COMMISSION) TO UPDATE THE ORDINANCE TO REFLECT CHANGES TO THE VIRGINIA HUMAN RIGHTS ACT (VIRGINIA CODE TITLE 2.2, CHAPTER 39), THE VIRGINIA FAIR HOUSING LAW (VIRGINIA CODE TITLE 36, CHAPTER 5.1), and VIRGINIA CODE, TITLE 15.2, CHAPTER 9, §15.2-965, AS AMENDED.

WHEREAS, by recorded vote, the Human Rights Commission initiated certain amendments to the text of the City’s Human Rights Ordinance, Sections 2.431; 2-434; 2-433; 2-437; and 2-439.1 (“Proposed Text Amendments”); and

WHEREAS, a public meeting was held to discuss and receive comments on the Proposed Text Amendments on June 18, August 20, and September 17, 2020 and the proposed amendments were presented to, discussed and approved at the October 15, 2020 public meeting of the Human Rights Commission for recommendation to Charlottesville City Council; and

WHEREAS, after consideration of the Human Rights Commission recommendations and other factors and considerations, this Council is of the opinion that that the Proposed Text Amendment has been designed to comply with recent changes to the Virginia Human Rights Act (Virginia Code Title 2.2, Chapter 39), the Virginia Fair Housing Law (Virginia code Title 36, Chapter 5.1), and Virginia Code, Title 15.2, Chapter 9, §15.2-965 of the Code of Virginia (1950), as amended, and this Council hereby finds and determines that: (i) the public necessity, convenience, and general welfare require the Proposed Text Amendment, and (ii) the Proposed Text Amendment is consistent with the Council’s vision of the City as a leader in social justice; now, therefore,

BE IT ORDAINED by the Council of the City of Charlottesville, Virginia that: Sections 2.431; 2-434; 2-433; 2-437; and 2-439.1 of the Code of the City of Charlottesville (1990), as amended, is hereby amended and reenacted as follows:

Article XV. Human Rights

Sec. 2-430. Short title.

This Article shall be known and referred to as the Charlottesville Human Rights Ordinance.

Sec. 2-431. Unlawful discrimination prohibited.

(a) It shall be unlawful and a violation of this article for any person, partnership, corporation or other entity to engage in discrimination in **housing**, employment, public accommodations, credit, and private education on the basis of race, color, religion, national origin,

sex, pregnancy, childbirth or related medical conditions, age, marital status, sexual orientation, gender identity, ~~pregnancy, childbirth or related medical conditions, national origin, age, marital status~~, status as a veteran, or disability.

(b) It shall be unlawful and a violation of this article for any person, partnership, corporation or other entity to engage in discrimination in housing on the basis of race, color, religion, national origin, sex, elderliness, familial status, source of funds, sexual orientation, gender identity, status as a veteran, or disability.

(c) ~~As used herein, the term “discrimination on the basis of sex” is defined to include, but not be limited to, discrimination on the basis of gender identity, transgender status or sexual orientation.~~ As used in herein, the term "gender identity" means the gender-related identity, appearance, or other gender-related characteristics of an individual, without regard to the individual's designated sex at birth.

(d) As used herein, the term “source of funds” means any source that lawfully provides funds to or on behalf of a renter or buyer of housing, including any assistance, benefit, or subsidy program, whether such program is administered by a governmental or nongovernmental entity.

(e) As used herein, the term “unlawful discriminatory practice” includes conduct in violation of any comparable Virginia or federal statute or regulation governing unlawful discrimination.

Sec. 2-432. Human Rights Commission.

(a) There is hereby created in the City of Charlottesville a Human Rights Commission, ~~consisting of no less than nine (9) members~~ the members of which shall be appointed by the City Council. ~~Effective X, 20XX, the appointed membership of the Commission shall consist of nine (9) members.~~ The Commission membership shall be broadly representative of the City’s ~~population demographic composition~~, with consideration of racial, gender (including gender identity, transgender status, and sexual orientation), religious, ethnic, disabled, socio-economic, geographic neighborhood and age groups ~~within the City; with priority given to City residents, and to applicants with significant and demonstrable ties to the City.~~ At least two members will have professional expertise in employment or housing discrimination, have personal experience with employment or housing discrimination, or identify as a member of a group that experiences discrimination. Of the members first appointed, at least three shall be appointed for terms of three years, at least three shall be appointed for terms of two years, and at least three shall be appointed for terms of one year. Thereafter members shall be appointed for terms of three years each. Any vacancy shall be filled by the City Council for the unexpired portion of a term. Following notice to the member, any member of the Commission may be removed for good cause by a majority vote of City Council.

(b) The Commission shall elect from its members a chair, a vice-chair, and such other officers as the Commission may deem appropriate. ~~The Commission may also adopt rules and procedures to govern the conduct of its affairs.~~

(c) Members of the Commission shall serve without compensation, but funds may be appropriated in the City’s annual budget for reasonable and necessary expenses to be incurred by Commission in the conduct of its prescribed functions.

(d) All meetings of the Commission shall be advertised in advance and in the manner required by law, and shall be open to the public except for meetings lawfully closed pursuant to

the Virginia Freedom of Information Act. The Commission may adopt bylaws and procedures to govern the conduct of its meetings; provided, however, that at ~~At~~ the beginning and at the end of each of its public meetings the Commission will receive public comment in accordance with City Council's adopted "Rules for Public Participation".

(e) The Commission may, in its discretion, delegate any of its duties or responsibilities hereunder to a panel of not less than three Commissioners.

(f) There shall be a full-time Director of the Commission, who shall be appointed by the City Manager with the advice and consent of the Commission and who shall serve full time in that capacity. A candidate proposed for appointment as the Director must demonstrate significant prior professional experience performing one or more of the activities or roles described in sections 2-433(a)-(b), 2-434, 2-435(a), 2-437 and 2-439.1 of this article. The Director will be responsible for and report to the Commission in the day-to-day operational conduct of the Commission's activities. The Director shall report directly to the City Manager for administrative and fiscal matters. The City Manager shall delegate to the Director the authority to employ such additional staff as authorized and funded by the City Council, in order for the Commission to fulfill effectively its obligations under this Ordinance.

(g) The City Council shall establish policies and procedures for the performance by the Commission of the roles, duties and responsibilities set forth within this article ("operating procedures"). All City departments, boards and commissions shall cooperate with and provide assistance to the Commission, including the provision of information in response to reasonable requests from the Commission.

(h) Legal counsel shall be provided to the Commission and its staff through the Office of the City Attorney. The City Council may authorize retention of outside counsel where deemed appropriate upon recommendation of the City Attorney.

(i) The Commission shall make quarterly reports to the City Council concerning the operation of the Commission and the status of the Commission's performance of the duties, responsibilities and roles set forth within this article. One of the required quarterly reports shall be an annual report. The schedule for submission of these reports, and the required contents of the reports, shall be as specified within the Commission's operating procedures.

Sec. 2-433. Role of the Human Rights Commission.

The role of the Human Rights Commission is to act as a strong advocate for justice and equal opportunity by providing citywide leadership and guidance in the area of civil rights. The Commission will:

(a) Assist individuals who believe they are the victim of an act of unlawful discrimination within the City; ~~Identify and review policies and practices of the City of Charlottesville and its boards and commissions and other public agencies within the City and advise those bodies on issues related to human rights issues;~~

(b) Collaborate with the public and private sectors for the purpose of providing awareness, education and guidance on methods to prevent and eliminate discrimination citywide;

(c) Identify and review policies and practices of the City of Charlottesville and its boards and commissions and other public agencies within the City and advise those bodies on issues related to human rights issues; ~~Assist individuals who believe they are the victim of an act of~~

unlawful discrimination within the City;

(d) Seek work share agreements with the Equal Employment Opportunity Commission (“FEPA”) and the Department of Housing and Urban Development (“HUD-FHAP”) to conduct investigations of employment and housing discrimination on their behalf, and enter into such agreement(s) subject to approval of City Council upon a finding that the agreement(s) would be in the best interest of the City.

(e) Make recommendations regarding the City’s annual legislative program, with an emphasis on enabling legislation that may be needed to implement programs and policies that will address discrimination; and

(f) Prepare recommendations to City Council as to policies and procedures the Commission believes are necessary for the performance of the roles, duties and responsibilities assigned to the Commission within this article, and for modifications of operating procedures approved by City Council.

Sec. 2-434. Duties and responsibilities – Community dialogue and engagement.

(a) The Commission will serve as a forum for the discussion of human rights issues, and be responsible for conducting ongoing efforts to engage community members in an open, honest and creative dialogue regarding issues of equity and opportunity, including but not limited to issues considered by the City’s Dialogue on Race initiative.

(b) The Commission ~~may~~ will conduct or engage in educational and informational programs for the promotion of mutual understanding, reconciliation and respect between all classes of individuals protected by this ordinance and the larger Charlottesville community.

Sec. 2-435. Duties and responsibilities – Systemic issues.

(a) The Commission will be responsible for identifying and reviewing policies, practices and systems of an institutional nature that:

- (1) May be unlawful discriminatory practices; or,
- (2) May not constitute unlawful discriminatory be practices but nevertheless which produce disparities that adversely impact affect individuals on the basis of a status such as their race, color, religion, sex, pregnancy, childbirth or related medical conditions, national origin, age, marital status, criminal record, income or disability.

(b) Any review undertaken pursuant to this section may be initiated at the request of any other public or private entity, or by the Commission on its own initiative.

(c) The Commission may conduct its own research and review of existing studies and literature, collaborate with other research organizations, organize public focus groups and hold such hearings as may be necessary to identify policies, practices and systems as referenced in (a), above. For each such identified policy, practice or system, the goal of the Commission will be to formulate recommendations and to propose to City Council concrete, actionable reforms that will eliminate discriminatory practices or the adverse effects of lawful other practices. On and after July 1, 2021, the Commission will conduct at least one such research project or review every two years. The Commission will report the status of its ongoing project(s) or review(s) to City Council within its quarterly and annual reports.

Sec. 2-436. Reserved.

Sec. 2-437. Duties and responsibilities – Investigation of individual complaints and issuance of findings.

(a) The Director will develop and implement a central intake mechanism for receiving and processing individual complaints that allege an unlawful discriminatory practice in the City.

(b) ~~In cases where investigation and remediation are already available in the City, such as employment discrimination complaints within the jurisdiction of the Equal Employment Opportunity Commission (“EEOC”) or fair housing complaints addressed by the Piedmont Housing Alliance, the complaint will be referred to that agency so that investigation and enforcement may be initiated by those bodies, which will offer services in the City and, to the extent allowed by law, report their findings to the Commission.~~ For complaints alleging an unlawful discriminatory practice within the enforcement jurisdiction of the City, defined herein as within the corporate limits of the City and as authorized by state and federal statutes, the Director or other designated professional staff are authorized to undertake further action as detailed in Sec. 2-437 (c). For complaints alleging an unlawful discriminatory practice that falls outside the jurisdiction of the City, the Director or other designated professional staff will refer the complaint to the appropriate state or federal agency.

(c) ~~For all other complaints alleging an~~ Upon determination that an alleged unlawful discriminatory practice falls within the enforcement jurisdiction of the City, as defined herein within the corporate limits of the City, the Director or other designated professional staff will conduct, as authorized by this ordinance, an initial fact-finding inquiry to determine if the Complainant presents a prima facie case. fact-finding, mediation, conciliation, and, if necessary, full investigation of the complaint as he or she deems appropriate to ascertain the facts underlying the charge of discrimination, provided that the ~~The~~ complaint may be dismissed by the Director without further action investigation if it fails to adequately allege a violation of this ordinance or is otherwise deficient on its face. If Following the initial fact-finding inquiry, if the complaint is not dismissed, and the Complainant wishes to pursue further action, the Director will serve a copy on each respondent named therein.; Said copy shall specify the allegation, citing the evidence that supports further action, and indicating the action to be taken. Further action, as authorized by this ordinance, may include mediation, conciliation, and formal investigation of the complaint, as deemed appropriate by the Director. Upon completion of a formal ~~the initial~~ investigation, the Director shall render a written determination of whether there is probable cause to believe a violation of this ordinance has occurred, and the facts supporting such determination. The written determination shall promptly be served on the parties.

(d) If the Director determines that further action is appropriate ~~that there is probable cause to believe a violation has occurred,~~ the Director will propose an initial meeting between the parties for the purpose of exploring a resolution of the complaint through voluntary mediation or other informal means. Nothing herein shall be interpreted as requiring any party to participate in mediation or any other conciliatory efforts. Materials used and communications made during a mediation or informal conciliation shall be confidential, and shall not be disclosed to the public by the Director, the Commission or its staff unless disclosure is authorized in writing by all parties to the dispute.

(e) If the mediation or conciliation is concluded to the satisfaction of both parties, the complaint will be considered resolved upon the parties’ execution of a written conciliation or

settlement agreement. Unless all parties agree otherwise, the execution of a written agreement is solely for the purpose of settling a disputed claim and does not constitute an admission by any party that the law has been violated. No further action on the initial complaint will be taken by the Commission or its staff once the agreement is executed.

(f) If mediation or conciliation is not successful, and the Complainant wishes to pursue further action, the Director or designee may conduct further a formal investigation for the purpose of rendering a written determination as to whether there is probable cause to believe a violation of this ordinance occurred, and the facts supporting such determination. ~~or,~~ If further investigation is not warranted, the Director may either dismiss the complaint as not constituting a violation. ~~or~~ After a written determination has been served on both parties, the Director may either close the case or proceed with the preparation of materials for consideration by the Commission, as provided in section 2-439.1 (b).

(g) In order to fulfill the requirements of this section, the City Manager is authorized to contract on behalf of the City with any objective, neutral third party qualified to assess allegations of discriminatory conduct as prohibited in section 2-431, for the purpose of receiving complaints, conducting investigations, rendering written determinations of whether there is probable cause to believe a violation of this ordinance has occurred, conducting mediations or conciliations of complaints and advising the Director of the Commission of the results of any investigation, mediation or conciliation of complaints.

Sec. 2-438. Reserved.

Sec. 2-439.1. Enforcement authority – The role of the Commission.

(a) If the Director determines that there is insufficient probable cause to believe a violation of this ordinance has occurred, the Director shall dismiss the complaint and advise the complainant in writing that such dismissal shall become final unless, within ten (10) business days of receipt of notice of the dismissal, the complainant files with the Commission a request for a review of the determination of the Director. On written petition of the complainant the Commission may review the Director's conclusion, and may either overrule or affirm the finding of no probable cause. The parties may submit such additional information as they desire for the Commission's consideration. If the Commission determines that probable cause exists, it shall direct the Director to continue the investigation or proceed with conciliation efforts.

(b) If the Director determines that probable cause to believe a violation did occur and either party declines to participate in mediation or other informal means of resolving the complaint, or if such efforts are attempted but unsuccessful, the Director shall prepare a written summary of the evidence on which the determination of probable cause is based, and shall recommend appropriate remedies for the discriminatory actions in a report to the Commission. The Commission shall determine by majority vote whether to hold a public hearing on the complaint. The Commission shall base its determination on its judgment as to how enforcement of this ordinance would be best served. If the Commission determines not to hold a public hearing, it shall either dismiss the complaint or take such action as it deems appropriate and consistent with the purposes of this ordinance and the powers of the Commission hereunder.

(c) If a hearing is to be held, the Commission shall promptly notify the parties of the time, date and location of the hearing and serve upon them a statement of the charges against the respondent, the Director's summary of the evidence and recommended remedies, and the issues to

be considered at the hearing. The Commission will have the option to consider all of the allegations and issues set forth in the complaint or, in its discretion, may limit the scope of the hearing to one or more of the allegations or issues. The notice and statement shall be served no later than 14 days prior to the date of the hearing. Hearings of the Commission may be held before the entire Commission or before designated hearing panels, consisting of three or more members of the Commission, as the Commission in its discretion may determine. The Chair or a Commissioner designated by the Chair shall preside over the public hearing, which shall be open to the public.

(d) Whenever the Commission has reasonable cause to believe that any person has engaged in or is engaging in any unlawful discriminatory practice, and the Commission, after a good faith effort to obtain the data and information necessary to determine whether a violation has occurred, has been unable to obtain such information, it may request the City Attorney to apply to the judge of the circuit court of the jurisdiction in which the respondent resides or is doing business for a subpoena *duces tecum* against any person refusing to produce such data and information. The judge of the court, upon good cause shown, may cause the subpoena to be issued. Any person failing to comply with such subpoena shall be subject to punishment for contempt by the court issuing the subpoena. For purposes of this section, “person” includes any individual, partnership, corporation, association, legal representative, mutual company, joint stock company, trust, unincorporated organization, employee, employer, employment agency, labor organization, joint labor-management committee, or an agent thereof.

(e) In cases to be heard by the Commission the complainant and the responding parties shall be entitled:

- (1) To file written statements or arguments with the Commission prior to the hearing;
- (2) To be represented by privately retained counsel of his or her choice;
- (3) To present his or her case or defense by oral or documentary evidence, to be given under oath or by affirmation;
- (4) To submit rebuttal evidence; and
- (5) To conduct such cross-examination as may be required for a full and true disclosure of the facts. Any oral or documentary evidence may be received, but the Commission as a matter of policy shall provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence. The Commission shall not be bound by the strict rules of evidence prevailing in the courts of law or equity.

(f) The Director shall be responsible for assuring the development of the evidentiary record before the Commission and may introduce evidence, examine or cross-examine witnesses, or make argument if ~~he or she~~ they deems it advisable in order to fully apprise the Commission of the facts or the applicable law. The Commission shall keep a full record of the hearing, which record shall be public and open to inspection by any person unless otherwise provided by any applicable law or regulations. Any party may request that the Commission furnish such party a copy of the hearing record and shall reimburse the Commission for the cost of producing the copy. In matters where any party is represented by counsel, the office of the City Attorney shall provide an attorney as counsel to the Commission who will also assist the Director in preparing the case.

(g) If, after the hearing, the Commission determines by a preponderance of the evidence

that the respondent has committed or is committing the alleged violation(s) of this ordinance, the Commission shall state its findings and may issue recommendations, to be served promptly on the parties, which recommendations may include notice to the respondent to cease and desist from such violation(s) and to take such action as may be authorized by law to effectuate the purpose of this ordinance, including but not limited to the payment by respondent of compensatory damages to any person or persons found by the Commission to be so entitled by reason of the violation(s) of this ordinance, or the placement or restoration of any person in or to such status in which the Commission finds ~~he or she~~ they would be but for respondent's violation(s) of this ordinance.

(h) If, after receiving the evidence presented at the hearing, the Commission finds that the respondent has not engaged in the alleged violation(s) of this ordinance, the Commission shall state its findings and shall dismiss the complaint. Prompt notice of such action shall be given to the parties.

(i) Nothing herein shall be construed as authorizing the Commission to issue subpoenas, award damages or grant injunctive relief.

Sec. 2-439.2. Enforcement authority – Court enforcement.

(a) If the Commission finds that a respondent has committed a violation of this ordinance and determines that appropriate remedial measures have not been taken, the Commission, through the City Attorney, and subject to approval by the City Council, may file an appropriate action in any court of competent jurisdiction to prove, *de novo*, that the respondent violated this chapter; secure compliance with this chapter; and/or obtain appropriate relief available under any applicable federal or state statute or regulation including, but not limited to an award of injunctive relief, compensatory and / or punitive damages and a recovery of costs and attorney's fees for any person, including the City, injured as a result of a violation of this chapter.

(b) If the City Council approves the institution of any proceeding in court, the proceeding shall be brought in the name of the City Council and the Human Rights Commission of the City of Charlottesville.

Sec. 2-440. Confidentiality.

It shall be unlawful for any Commissioner, officer, employee, contractor or staff member of the Commission to disclose or make public any complaints, investigative notes, or other correspondence and information furnished to the Commission or its staff in confidence with respect to a complaint, an investigation or conciliation process involving an alleged unlawful discriminatory practice. A violation of this section shall be a Class 3 misdemeanor.

Sec. 2-441. Annual Report.

The Commission shall make an annual comprehensive report to City Council that outlines its efforts during the preceding year in the areas of identifying and addressing systemic or institutional discrimination; processing individual complaints of unlawful discrimination; and facilitating a community dialogue regarding issues of human rights. The report shall also outline the Commission's work plan for the ensuing year, which shall be subject to approval or modification by City Council.

Sec. 2-442. Severability.

The provisions of the Article are severable; and if any provision, sentence, clause, section

or part thereof is held illegal, invalid, unconstitutional or inapplicable to any person or circumstance, such illegality, invalidity, unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Article, or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this Article would have been adopted if such illegal, invalid or unconstitutional provision, sentence, clause, section or part had not been included therein, and if the person or circumstances to which the chapter or any part thereof is inapplicable had been specifically exempted therefrom.

Sec. 2-443. Reserved.

Text Legend

<p>Bold Strike Through = deleted language</p> <p><u>Underline</u> = new language</p> <p>Existing language</p>
