

ORDINANCE O-19-XX
AN ORDINANCE AMENDING CHAPTER 22, BUSINESSES,
TO ADD A NEW ARTICLE IX, UNLAWFUL DISCRIMINATION

WHEREAS, the Mayor and Commissioners of the City of Decatur (“City Commission”) are charged with the protection of the public health, safety, welfare and prosperity of the City of Decatur; and

WHEREAS, it is the intent of the Decatur City Commission to protect and safeguard the right and opportunity of all persons to be free from all forms of discrimination, including discrimination based on actual or perceived race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteran/military status of all persons who live in, work in or visit the City of Decatur;

WHEREAS, in order to protect and promote the public health, safety, welfare and prosperity of the City, it is important for the City to ensure that all persons within the City have equal access to employment, housing, and public accommodations;

WHEREAS, the City Commission of the City of Decatur therefore finds it advisable and necessary to prohibit certain instances of discrimination where the City’s authority is not preempted by Federal or State law or the alleged discrimination is not subject to other remedies under Federal or State law;

WHEREAS, the City Commission of the City of Decatur specifically finds it advisable and necessary to prohibit businesses licensed or permitted by the City to conduct business in the City from discriminating against employees, residents and members of the public.

NOW, THEREFORE, the CITY COMMISSION OF THE CITY OF DECATUR, GEORGIA HEREBY ORDAINS that Chapter 22, Businesses, of the Code of Ordinances of the City of Decatur, shall be amended as follows:

SECTION 1

Chapter 22, Businesses, of the Code of Ordinances of the City of Decatur shall be amended by adding a new Article IX, titled “Unlawful Discrimination,” which article shall read as follows:

ARTICLE IX. UNLAWFUL DISCRIMINATION

Section 22-240. Definitions.

The following words, terms and phrases, when used in this article, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

Age means an individual's status as being forty years of age or older.

Business means any person or entity conducting business within the city, which is required to obtain a license or permit from the City. For purposes of this article, no department of any government agency shall be considered to be a business (notwithstanding licensure by the City).

Complainant means an individual that files a complaint pursuant to this ordinance.

Discriminate, discrimination, or discriminatory means any act, policy or practice that, regardless of intent, has the effect of subjecting any person to differential treatment as a result of that person's actual or perceived race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or military status.

Employee means any person employed by or seeking employment from any business within the City of Decatur. Employee does not include any individual employed by such individual's parents, spouse or child.

Employer means a person who employs one or more employees in the City of Decatur.

Familial status means an individual's past, current or prospective status as a parent or legal guardian to a child or children below the age of eighteen (18) who may or may not reside with that individual.

Gender identity means the actual or perceived gender-related identity, expression, appearance or mannerisms, or other gender-related characteristics of an individual, regardless of the individual's designated sex at birth.

Marital status means an individual's past, current, or prospective status as single, married, domestically partnered, in a civil union, divorced, or widowed.

Mediator means a qualified neutral third party that will attempt to assist the complainant and the respondent(s) to arrive at a mutual agreement to resolve a complaint.

Military status means an individual's status as one who serves or served in the uniformed services, military, naval or air service, and who was discharged or released under conditions other than dishonorable.

National origin means an individual's place of origin or an individual's ancestors' place of origin.

Place of public resort, accommodation, assemblage, or amusement means any place, store, or other establishment, either licensed or unlicensed, that supplies accommodations, goods, or services to the general public, or that solicits or accepts the patronage or trade of the general public, or that is supported directly or indirectly by government funds. The term does not include any private club, bona fide membership organization, or other establishment that is not in fact open to the public.

Religion means all aspects of religious belief, observance and practice.

Religious organization means an entity which conducts regular worship services or is qualified as a religious organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as now or hereafter amended, that is not required to file IRS Form 990, return of Organization Exempt from Income Tax, under any circumstances.

Respondent means an individual or business accused of violating this ordinance in a complaint.

Sexual orientation means an individual's actual or perceived orientation as heterosexual, homosexual, bisexual, pansexual or asexual.

Section 22-241. Unlawful Practices.

(a) It shall be an unlawful discriminatory practice for a business, because of the race, religion, color, sex, disability, national origin, ancestry, sexual orientation, gender identity, age or military status of any person, to refuse to hire or employ such person or to bar or discharge such person from employment or to otherwise discriminate against such person in compensation or in terms, conditions or privileges of employment, or to follow any employment procedure or practice which, in fact, results in discrimination, segregation or separation.

(b) It shall be an unlawful discriminatory practice for a business to discriminate against any person in the terms, conditions or privileges of sale or rental of real property, or in the provision of services or facilities in connection therewith, because of race, religion, color, sex, disability, familial status, national origin, ancestry, sexual orientation, gender identity or military status, or to discriminate against any person in such person's use or occupancy of rental housing because of the race, religion, color, sex, disability, familial status, national origin ancestry, sexual orientation, gender identity, or military status of the people with whom such person associates.

(c) It shall be an unlawful discriminatory practice for any business, as defined herein being the owner, operator or manager of any place of public accommodation, to refuse, deny or make a distinction, directly or indirectly, in offering its goods, services, facilities, and accommodations to any person as covered by this ordinance because of race, religion, color, sex, disability, national origin, ancestry, sexual orientation, gender identity, age or military status. Notwithstanding the above, nothing in this ordinance shall be construed to prevent any business as defined in this ordinance from offering, affording or providing any additional benefit or additional discount to a person because of such person's military status.

Section 22-242. Exclusions from Discriminatory Practices.

Notwithstanding the foregoing, the following are not discriminatory practices prohibited by Section 22-241 of this ordinance:

- (a) A religious corporation, association, or society that employs an individual of a particular religion to perform work connected with the performance of religious activities by the corporation, association, or society.

- (b) An employer who observes the conditions of a bona fide affirmative action plan or a bona fide seniority system which is not a pretext to evade the purposes of this ordinance.
- (c) A business is not required to hire unqualified or incompetent personnel.
- (d) This ordinance does not prohibit an employer from requiring an employee, during the employee's hours at work, to adhere to reasonable and equitable dress or grooming standards not prohibited by other provisions of Federal, State or local law, provided that all employees are permitted to dress in a manner consistent with their gender identity.
- (e) A business is not required to make changes to any existing facility that would require a building permit, except as otherwise required by law.
- (f) This ordinance does not prohibit a religious organization from limiting its non-commercial accommodations, advantages, facilities, membership, and privileges to persons of the same religion.
- (g) This ordinance shall not be construed in such a way as to violate any person's rights under the United States Constitution or the Georgia Constitution.

Section 22-243. Enforcement.

- (a) Any person who believes they have been aggrieved by an alleged violation of this article may file a complaint with the City Manager on a form to be provided by the City. The complaint form shall include the full name of the complainant, the identity and address of the alleged violator, a description of the actions alleged to constitute a violation of this article, and verification by the complainant under oath that the allegations of the complaint are true. The City Manager shall not accept for filing any complaint that fails to comply with the foregoing requirements.
- (b) Any such complaint must be filed within ninety (90) calendar days of the alleged act of discrimination.
- (c) Upon the filing of a complaint, the City Manager shall cause a copy of the complaint to be delivered to the Chief of Police.
- (d) Within seven (7) business days of receipt of a copy of the complaint from the City Manager, the Chief of Police or his or her designee shall cause a copy of the complaint and a summons to be served on the respondent. The summons shall direct the respondent to appear before a municipal court judge of the City on a date and time certain for a preliminary determination hearing. For purposes of this section, service

shall mean either personal service or service by certified mail, return receipt requested.

- (e) Prior to the preliminary determination hearing, the Chief of Police or his or her designee shall cause the original of the complaint, a copy of the summons, and proof of service of the complaint and summons to be filed with the Clerk of Municipal Court.
- (f) The respondent may file with the municipal court an answer to the complaint at any time prior to the preliminary determination hearing. However, filing an answer is not mandatory and no adverse inference shall be drawn by the respondent's failure to file an answer.
- (g) At the preliminary determination hearing, the municipal court judge shall review the complaint and answer, if any, to determine: (1) whether the complaint is in conformity with the requirements of this article; (2) whether the proceeding is preempted by Federal or State law; and (3) whether the complaint demonstrates facts sufficient to show probable cause of a violation of this article. Upon such determination, the municipal court judge shall enter a written order, expressly stating the foregoing determinations and either dismissing the complaint or scheduling the matter for a trial on the merits of the alleged violation on a date not less than sixty (60) days from the date the written order is filed.
- (h) In the event the municipal court judge determines that there is probable cause and the City Solicitor determines that the alleged violation should be prosecuted, the City Solicitor shall, within fifteen (15) days of the date the written order is filed, draw up, file with the Clerk of Municipal Court, and serve upon the respondent a formal accusation or similar charging instrument. For purposes of this section, service shall mean either personal service or service by certified mail, return receipt requested.
- (i) Upon trial, the burden of proof shall be by a preponderance of the evidence.

Section 22-244. Penalty.

- (a) Any person or business found by the municipal court to have violated any provision of this article shall be subject to a civil penalty of \$500 for the first violation and \$1,000 for subsequent violations.

Section 22-245. Voluntary Mediation.

- (a) Within seven (7) business days of service of a copy of a properly filed complaint, the Clerk of Municipal Court or his or her designee shall provide complainant and respondent, in writing, with notice of and instructions regarding the City's voluntary mediation program for discrimination complaints, such notice to be sent by certified mail or statutory overnight delivery, return receipt requested.

- (b) Upon written request of the complainant and/or the respondent, the Clerk of Municipal Court or his or her designee shall provide the services of a private mediator to conduct non-binding mediation between the complainant and the respondent. The mediator shall be selected by the Clerk of Municipal Court from a list of qualified mediators approved by the City Manager. Such mediation services shall be paid by the City, up to a maximum of six (6) hours. The complainant and respondent may agree to obtain additional time with the mediator at their own cost, to be split equally or as they otherwise agree. The mediation shall be completed and the Clerk of the Municipal Court notified by the mediator of the result within thirty (30) days of referral to the mediator.
- (c) Any mediation hereunder shall be conducted in accordance with procedures established by the mediator.
- (d) The enforcement proceeding before the Municipal Court shall be stayed during the time that the matter is referred to mediation.

SECTION 2

Consistent with Section 1-6 of Chapter 1 of the Code of Ordinances of the City of Decatur, it is hereby declared to be the intention of the City Commission that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the valid judgement or decree of any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance.

SECTION 3

This Ordinance shall become effective immediately upon its adoption.

SO ORDAINED, this _____ day of _____, 2019.

CITY OF DECATUR, GEORGIA

Mayor

ATTEST:

City Clerk