



## Memorandum

To: Members of Council

From: William M. Ondrey Gruber, Director of Law, and  
Lisa Gold-Scott, Assistant Director of Law

cc: Mayor David E. Weiss  
Chief Administrative Officer Jeri E. Chaikin

Date: May 13, 2019

Re: **Anti-Discrimination Ordinance**

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In light of the recent action by Cuyahoga County Council enacting an anti-discrimination law, including prohibiting discrimination against LGBTQ persons, we propose that that the City adopt the attached legislation enacting a new Codified Ordinance Chapter (516) in the Business Regulation Code to prohibit discrimination in employment and public accommodations in the City in the same manner as the County has enacted. The proposed legislation would refer complaints received by the City to the County for investigation and enforcement, through the County's newly created Human Rights Commission.

Housing discrimination cases would still remain with the City's Fair Housing Office/Law Department, and be investigated and enforced by the City through Chapter 515 of the Codified Ordinances.

### **I. The City's Anti-Discrimination Law & Policies**

#### **A. Fair Housing Ordinance**

The City has a national reputation as a community that treasures diversity and open housing choice for all. In 1992, the City was one of the first cities in the nation to be recognized by the federal government as having a fair housing law that is substantially equivalent to the federal Fair Housing Act. The City's Fair Housing ordinance, Chapter 515, which was first enacted by Ordinance No. 92-35, prohibited discrimination on the basis of race, color, religion, sex, ancestry, national origin, handicap, and familial status. The City's ordinance was amended in 2006, by Ordinance No. 06-20, to include sexual orientation and gender identity as additional protected classes.

The City's Law Department has, since 1992, acted as the City's Fair Housing Office, with an active enforcement program, as well as planning and conducting activities that creatively and affirmatively promote fair housing through education and outreach. The City receives annual Federal fair housing grants from the U.S. Department of Housing & Urban Development (HUD) to help offset some of the City's costs in conducting the City's Fair Housing Program.

#### **B. City's Employment Policies**

Council adopted a non-discrimination in employment policy in Resolution No. 76-145, adopted on December 27, 1976, and reaffirmed and clarified the policy in Resolution No. 88-44, adopted on May 23, 1988.

The policy put into writing the City’s long observed principle of recruiting, hiring, training, and promoting City employees without regard to race, color, religion, sex, national origin, age, or handicap, except where such factors would be bona fide obstacles to expected job performance.

In Resolution 08-15, enacted on February 25, 2008, Council adopted a revised non-discrimination policy for City employment in order to add the protection for applicants for jobs and employees from discrimination based on ancestry, sexual orientation, and gender identity.

The City most recently updated its Employee Manual for non-bargaining employees in 2012. The Manual incorporates Council’s non-discrimination policy, as stated in the 2008 Resolution. Thus, the City’s employment policy confirms that the City does not discriminate in employment on the basis of race, color, religion, sex, national origin, age, ancestry, disability, sexual orientation or gender identity.

**C. Collective Bargaining Agreements**

The City has 5 separate collective bargaining agreements (CBAs) with its employee unions. Each agreement is negotiated separately and has unique terms and conditions. However, regardless of the language in any CBA, per State law (R.C. 4117.10(A)), CBA terms do not prevail over any laws pertaining to civil rights. Thus, no matter what the language of a particular CBA includes or does not include as to protections against discrimination, the City’s ordinances, the new County civil rights ordinance, and State and federal civil rights laws all apply to the City’s employment of employees who are part of a City union.

**D. Standard City Bid Specifications and Contracts**

The City enters into hundreds of contracts each year for a variety of services. It is the policy of the City to include in most contracts, through bid specifications, RFPs and/or specific contract language in contracts prepared by the City, to include a provision prohibiting discrimination by the contractor, vendor or consultant on the following bases: race, color, religion, sex, national origin, age, ancestry, sexual orientation or gender identity.

**II. Cuyahoga County’s Recently Enacted Non-Discrimination Ordinance**

In September, 2018, the Cuyahoga County Council passed an ordinance applicable County-wide making it illegal to discriminate in the areas of housing, employment, and public accommodations.

<b>Subject Area</b>	<b>Protect Classes</b>
Fair Housing	race, color, religion, military status, national origin, disability, ancestry, sex, familial status, sexual orientation, and gender identity and expression
Employment	race, color, religion, military status, national origin, disability, age,
Public Accommodations	ancestry, sex, sexual orientation, and gender identity and expression

An aggrieved person can file a discrimination complaint with the County’s newly created Human Rights Commission. The County ordinance provides a complaint and enforcement procedure, depending on the basis for the complaint.

1. Complaints involving discrimination based on race, color, religion, military status, national origin, disability, age, ancestry, sex, or familial status will be referred to the Ohio Civil Rights Commission (OCRC), and either HUD, for housing discrimination complaints, or the Equal Employment Opportunity Commission (EEOC), for employment discrimination.

2. Complaints involving discrimination that include both one of the bases listed above and sexual orientation or gender identity or expression, will be referred to OCRC/HUD/EEOC. The Complainant can choose to keep the hybrid complaint with the Human Rights Commission.
3. Complaints involving EXCLUSIVELY sexual orientation/gender identity/expression will be investigated by the County Human Rights Commission.

This County ordinance is currently in effect, and applies to Shaker Heights, providing protection from discrimination in employment and public accommodation for Shaker Heights residents and employees in the City. The City will continue to enforce the City's Fair Housing ordinance, and will ask the County to refer complaints of housing discrimination arising in Shaker Heights to our Fair Housing Office in the Law Department.

### **III. Recommendation for the City to Ensure Non-Discrimination Protections in Employment and Public Accommodations**

It is recommended that the City should:

1. Continue to enforce the City's Fair Housing Ordinance in Chapter 515 of the Codified Ordinances; and
2. Adopt the proposed anti-discrimination ordinance as to employment and public accommodations, similar to some other communities, such as the City of Beachwood, which mirrors the County ordinance substantively, but procedurally it refers complaints to the County's newly created Human Rights Commission.
3. Refer complaints directly to the appropriate agency that actually can handle the complaints. The City would refer complaints of discrimination in employment or public accommodation on the basis of race, color, religion, military status, national origin, disability, age, ancestry, sex, or familial status directly to the Ohio Civil Rights Commission (OCRC), and the Equal Employment Opportunity Commission (EEOC), for employment discrimination. Complaints involving discrimination on the basis of sexual orientation or gender identity or expression would be referred by the City to the County Human Rights Commission.

The value of the City adopting its own ordinance includes the following:

1. Puts the City on record and makes it clear to our residents, employers and businesses, that the City does not tolerate discrimination and will take any complaints brought to the City seriously.
2. Ensures that the civil rights laws applicable to the City's union employees are as inclusive as possible. It also will make it clear to the City's unions, no matter what language is included in the CBAs, that all City employees, and the union itself, are subject to the non-discrimination ordinance.
3. Ensures that if the County ordinance is challenged on the basis that it exceeds the County's legal authority under Ohio law, the non-discrimination provisions will be effective in Shaker Heights under the City's ordinance (except the City might then need to enact our own procedures for enforcement).

It is recommended that Council introduce and consider the attached ordinance on first reading.

ORDINANCE NO.

BY:

Enacting new Chapter 516, entitled "Discrimination Prohibitions in Employment and Public Accommodations" to the Business Regulation Code of the Codified Ordinances, in order to establish anti-discrimination ordinances, regulations, procedures, and standards, consistent with county anti-discrimination law in employment and public accommodations.

WHEREAS, the City has, since 1992, maintained and enforced prohibitions against housing discrimination through Chapter 515 of the Codified Ordinances by actively engaging in education, outreach, and complaint investigation and resolution; and

WHEREAS, the City desires to expand its anti-discriminatory provisions beyond housing, to include employment practices and public accommodations; and

WHEREAS the City further desires to protect and safeguard the rights and opportunities of all persons to be free from discrimination in employment and public accommodations, based upon race, color, religion, military status, national origin, disability, age, ancestry, familial status, sex, sexual orientation, and gender identity or expression; and

WHEREAS, on September 26, 2018, Cuyahoga County Council adopted Ordinance 2018-009, enacting Chapter 206.13, "Commission on Human Rights," and Title 15, "Anti-Discrimination," to ensure equal opportunity and treatment for all citizens of Cuyahoga County; and

WHEREAS it is imperative that the City ensure that all persons within the City have equal access and opportunities to employment and public accommodations; and

WHEREAS, the City, in order to achieve its desires, wishes to adopt an Anti-Discrimination Ordinance providing for direct referrals for aggrieved parties, similar in form and function to that enacted by the Cuyahoga County Council; and

WHEREAS, the purpose and intent in enacting this Ordinance is to promote the public welfare of all persons who live, visit, and work in the City, and to promote principles of diversity, inclusion, harmony, and equal treatment for all through education and outreach, and to ensure a mechanism for resolving complaints filed under this Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Shaker Heights, State of Ohio:

Section 1. Chapter 516 of the Business Regulation Code of the Codified Ordinances of the City of Shaker Heights is hereby enacted to read as follows:

**CHAPTER 516**

**Discrimination Prohibitions in Employment and Public Accommodations**

**516.01 PURPOSE**

It is hereby declared to be the purpose of this Chapter to provide, within constitutional limitations, for fair and non-discriminatory employment and public accommodations throughout the City, to assure that all persons have full and equal opportunity to seek and maintain employment, and to have use and enjoyment of all public businesses for themselves and their families within the City without being discriminated against on the basis of race, color, religion, military status, national origin, disability, age, ancestry, familial status, sex, sexual orientation, and gender identity or expression, and to promote a stable, diverse, welcoming community.

**516.02 DEFINITIONS**

As used in this Chapter:

(a) The prohibitions in this Chapter concerning "Age" mean individuals who are at least forty (40) years old.

(b) "City" means the City of Shaker Heights.

(c) "Complaint" means any petition or written statement under oath that alleges a violation of and/or discriminatory practice or act under this Chapter and/or Cuyahoga County Chapter 206.13 and Title 15.

(d) "Cuyahoga County Code" and "Cuyahoga County Chapter 206.13 and Title 15" refer to the Code of Cuyahoga County and those specific sections of the Code, as they may exist at the time of the enactment or amendment of this Chapter, and as they may be amended from time to time.

(e) "Cuyahoga County Human Rights Commission" means the Cuyahoga County Human Rights Commission created by Section 206.13 of the Cuyahoga County Code, and as it may be amended from time to time.

(f) "Disability" means a physical or mental impairment that substantially limits one or more major life activities, including the functions of caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working; a record of a physical or mental impairment; or being regarded as having a physical or mental impairment.

- (g) "Physical or mental impairment" includes any of the following:
- (1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine;
  - (2) Any mental or psychological disorder, including but not limited to an intellectual disability, organic brain syndrome, emotional or mental illness, and learning disability; and
  - (3) Diseases and conditions, including, but not limited to, orthopedic, visual, speech, and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, human immunodeficiency virus infection, intellectual disability, emotional illness, drug addiction, and alcoholism.
  - (4) "Substantially limits" means the ability of an individual to perform a major life activity as compared to most people in the general population. An impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity to be considered substantially limiting.

A determination of whether a physical or mental impairment substantially limits a major life activity should be made without regard to the ameliorative effects of mitigating measures, except ordinary eyeglasses and contact lenses. An impairment that is episodic in nature or in remission is a disability if it would substantially limit a major life activity when active.

(h) "Physical or mental impairment" does not include any of the following:

- (1) Pedophilia, exhibitionism, voyeurism, or any other sexual or behavioral disorders;
- (2) Compulsive gambling, kleptomania, or pyromania; or
- (3) Psychoactive substance use disorders resulting from current illegal use of a controlled substance and current use of alcoholic beverages.

(i) "Discriminate and discrimination" includes the segregation, separation, maltreatment, ill-treatment, or any unfavorable difference in treatment based on race, color, religion, military status, national origin, disability, age, ancestry, familial status, sex, sexual orientation, gender identity or expression.

(j) "Employee" means an individual employed by any employer and includes "independent worker and/or contractor," but does not include any individual employed in the domestic service of any person.

(k) "Employer" means any person who employs four (4) or more persons, within the City of Shaker Heights.

(l) "Employment Agency" means any persons regularly undertaking with or without compensation, to procure opportunities for employment or to procure, recruit, refer, or place employees.

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

(n) "Labor organization" includes any organization that exists for the purpose, in whole or in part, of collective bargaining or other mutual aid or protection in relation to employment.

(o) "Military Status" means any person who is engaged in "service in the uniformed services," and a member of the "uniformed services" or a veteran.

(p) "Person" includes one or more individuals, partnerships, associations, organizations, corporations, legal representatives, trustees, and trustees in bankruptcy, receivers, and other organized groups of persons. It also includes, but is not limited to, any owner, lessor, assignor, builder, manager, broker, salesperson, appraiser, agent, employee, and lending institution.

(q) "Place of public accommodation" means any hotel, motel, inn, restaurant, eating establishment, public swimming pool, public sports facility, public sports arena, theme park, amusement park, museum, barbershop, public conveyance by air, land or water, movie theater, music arena, concert hall, performing arts venue, theater, store, or other place for the sale of merchandise to the public, or any other place of public accommodation or amusement where the accommodation advantages, facilities, or privileges thereof are available to the public.

(r) "Service in the Uniformed Services" means the performance of duty, on a voluntary or involuntary basis, in a uniformed service, under competent authority, and includes active duty, active duty for training, initial active duty for training, inactive duty for training, full-time national guard duty, reserve duty in uniform, and performance of duty or training by a member of the Ohio organized militia pursuant to Chapter 5923 of the Ohio Revised Code. "Service in the uniformed services" includes also the period of time for which a person is absent from a position of public or private employment for the purpose of an examination to determine the fitness of the person to perform any duty described herein.

(s) The terms "because of sex" and "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, any illness arising out of and occurring during the course of a pregnancy, childbirth, or related medical conditions.

(t) "Sexual orientation" means a person's actual or perceived homosexuality, bisexuality, or heterosexuality, by orientation, practice, identity or expression, or having a self-image or identity not traditionally associated with one's gender.

(u) "Uniformed services" means the Armed Forces, the Ohio organized militia when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the public health service, and any other category of persons designated by the president of the United States in time of war or emergency.

(v) "Unlawful discriminatory practice" means any act prohibited under this Chapter and/or Cuyahoga County Chapter 206.13 and Title 15.

(w) "Veteran" means any person who has completed service in the armed forces, including the national guard of any state, or a reserve component of the armed forces.

#### **516.03 PROHIBITED DISCRIMINATORY PRACTICES IN EMPLOYMENT**

It shall be an unlawful discriminatory practice, except where based upon applicable national security regulations established by the United States:

(a) For any employer, because of race, color, religion, military status, national origin, disability, age, ancestry, sex, sexual orientation, or gender identity or expression, to discharge without cause, to refuse to hire a person or otherwise to discriminate against any person with respect to hire, promotion, tenure, discharge, or any terms, conditions or privileges of employment, or any matter related to employment;

(b) For any employer, employment agency, or labor organization to establish, announce or follow a policy discriminating against, denying, or limiting, the employment or membership opportunities of any person or group of persons because of race, color, religion, military status, national origin, disability, age, ancestry, sex, sexual orientation, or gender identity or expression;

(c) For any employer, labor organization, or joint labor-management committee controlling apprentice training program to discriminate against any person because of that person's race, color, religion, military status,



national origin, disability, age, ancestry, sex, sexual orientation, or gender identity or expression in admission to employment in any program established to provide apprentice training;

(d) For any employer, employment agency, or labor organization to publish or circulate, or to cause to be published or circulated, any notice or advertisement relating to employment or membership which indicates any preference, limitation, specification or discrimination based upon race, color, religion, military status, national origin, disability, age, ancestry, sex, sexual orientation, or gender identity or expression;

(e) For any person seeking employment to publish or to cause to be published any advertisement which specifies or in any manner indicates that person's race, color, religion, military status, national origin, disability, age, ancestry, sex, sexual orientation, or gender identity or expression of any prospective employer;

(f) For any employment agency to refuse or fail to accept, register, classify properly, or refer for employment or otherwise to discriminate against any person because of a person's race, color, religion, military status, national origin, disability, age, ancestry, sex, sexual orientation, or gender identity or expression;

(g) For any employer, employment agency, or labor organization to utilize in the recruitment or hiring of persons, any employment agency, placement service, labor organization, training school or center, or any other employee-referring source, known to discriminate against persons because of race, color, religion, military status, national origin, disability, age, ancestry, sex, sexual orientation, or gender identity or expression;

(h) For any labor organization to discriminate against any person or limit that person's employment opportunities, or otherwise adversely affect that person's status as an employee, or that person's wages, hours, or employment conditions, because of race, color, religion, military status, national origin, disability, age, ancestry, sex, sexual orientation, or gender identity or expression;

(i) For an employment agency to comply with, accommodate, or otherwise assist with locating an employee related to a request from an employer for referral of applicants for employment if the request indicates that the employer fails, or may fail, to comply with this Chapter;

(j) For any labor organization to limit or classify its membership based on race, color, religion, military status, national origin, disability, age, ancestry, sex, sexual orientation, or gender identity or expression;

(k) Except where based on a bona fide occupational qualification (and except for requests by an employer for the voluntary provision of demographic information to aid in diversity and inclusion efforts), for any employer, employment agency, or labor organization to:

- (1) Elicit or attempt to elicit any information concerning the race, color, religion, military status, national origin, disability, age, ancestry, sex, sexual orientation, or gender identity or expression of an applicant for employment or membership;
- (2) Use any form of application for employment or personnel or membership blank seeking to elicit information regarding race, color, religion, military status, national origin, disability, age, ancestry, sex, sexual orientation, or gender identity or expression but an employer holding a contract containing a non-discrimination clause with the government of the United States or any department or agency thereof, may require an employee or applicant for employment to furnish documentary proof of United States citizenship and may retain such proof in the employer's personnel records and may use photographic or fingerprint identification for security purposes;

(l) For any employer, employment agency, or labor organization to discriminate against any person because that person has opposed any practice forbidden by this Chapter, or because that person has made a complaint or assisted in any manner in any investigation or proceeding or hearing under this Chapter; or

(m) For any person to aid, incite, compel, coerce, or participate in the doing of any act declared to be an unlawful discriminatory practice by this Chapter, or to obstruct or prevent any person from enforcing or complying with the provisions of this Chapter, or to attempt to commit any act declared by this Chapter, or to attempt to obstruct or prevent any person from enforcing or complying with the provisions of this Chapter, or to attempt to commit any act declared by this Chapter, to be an unlawful discriminatory practice.

#### **516.04 EXEMPTION FROM PROHIBITIONS IN EMPLOYMENT**

Section 516.03 shall not apply to a religious corporation, association, educational institution, or society with respect to the employment of an individual of a particular religion to perform work connected with the carrying on by that religious corporation, association, educational institution, or society of religious activities.

**516.05 PROHIBITED DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATION**

It shall be an unlawful discriminatory practice:

(a) For any proprietor or any employee, agent, keeper, or manager of a place of public accommodation to deny, discriminate against, or treat differently any person except for reasons applicable alike to all persons regardless of race, color, religion, military status, national origin, disability, age, ancestry, sex, sexual orientation, or gender identity or expression, the full enjoyment of the accommodations, advantages, facilities, or privileges of a place of public accommodation; or

(b) For any person to knowingly aid, incite, compel, coerce, or participate in the doing of any act declared to be an unlawful discriminatory practice under this Section.

**516.06 CITY SERVICES, FACILITIES, TRANSACTIONS AND CONTRACTS**

The City shall be bound by the provisions of this Chapter to the same extent as private individuals. All contractors proposing to, or currently doing business with the City, shall abide by this Chapter.

**516.07 FALSE COMPLAINTS**

No person shall knowingly file a complaint including false or fraudulent information, submitted in bad faith with the intent to defame or to cause other reputational or material harm to an individual or organization. A determination or finding by the City or Cuyahoga County Human Rights Commission that a complaint is unsubstantiated is, alone, insufficient to prove the existence of a false complaint.

**516.08 DIVERSITY AND INCLUSION EFFORTS**

(a) Unless otherwise prohibited by law, nothing contained in this Chapter shall be construed to prohibit diversity and inclusion efforts and promotional activities and practices designed primarily to encourage participation by members of any historically marginalized protected group, in furtherance of the purposes of this Chapter.

(b) It shall not be an unlawful discriminatory practice for any person to carry out an affirmative action plan. An affirmative action plan is any plan devised to effectuate remedial or corrective action taken in response to past discriminatory practices against a historically marginalized group, or as otherwise required by state or federal law.

**516.09 COMPLAINT AND ENFORCEMENT PROCEDURE**

Discrimination Complaints filed directly with the City may be immediately referred to the Cuyahoga County's Human Rights Commission, the Ohio Civil Rights Commission (OCRC) or the U.S. Equal Employment Opportunities Commission (EEOC), as determined to be most appropriate in the discretion of the City, for investigation, review and enforcement, as appropriate in the discretion of such agency.

**516.10 JUDICIAL RELIEF**

The City, or the Complainant, or any person aggrieved by a violation of any provision of this Chapter may, at any time within one (1) year from the date of the alleged violation, and in lieu of proceeding with the administrative process set forth in this Chapter, apply to any court of competent jurisdiction for appropriate relief including, but not limited to:

- (a) Injunctive relief or an order otherwise compelling compliance with this Chapter;
- (b) Compensatory damages, and/or punitive damages;
- (c) Reasonable attorneys' fees and costs provided that such complainant, in the opinion of the court, is not financially able to assume such attorneys' fees; and/or
- (d) Such other or further relief as is appropriate for the enforcement of this Chapter and the elimination of violations thereof.

**516.11 SEVERABILITY**

This Chapter and each section and sub-section thereunder, are hereby declared to be independent and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said sections and sub-sections, or the application thereof to any person or circumstance is held to be invalid, the invalidity shall not affect other sections or sub-sections, and it is hereby declared that such sections and sub-sections would have been passed independently of such section or sub-section so known to be invalid.

Section 3: This ordinance shall take effect from and after the earliest time allowed by law.

Enacted

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
DAVID E. WEISS, Mayor

Attest:

\_\_\_\_\_  
JERI E. CHAIKIN  
Clerk of Council

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