

CITY OF OBERLIN, OHIO

ORDINANCE No. 20-64 AC CMS

AN ORDINANCE TO ENACT CHAPTER 703 OF THE OBERLIN CODIFIED ORDINANCES TO PROHIBIT DISCRIMINATION WITHIN THE CITY OF OBERLIN BASED UPON SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION

WHEREAS, Council desires to adopt local prohibitions on discrimination by reason of sexual orientation, gender identity or expression.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, a majority of all members elected thereto concurring:

SECTION 1: That Chapter 703 entitled “Unlawful Discrimination” is hereby enacted to read as is set forth on Exhibit A attached hereto and incorporated herein by reference.

SECTION 2: It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of the Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3: That this ordinance shall take effect at the earliest date allowed by law.

PASSED: 1st Reading: December 7, 2020

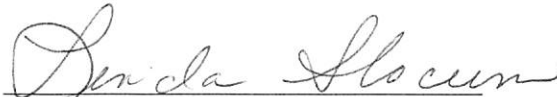
2nd Reading: December 21, 2020

3rd Reading: January 4, 2021

ATTEST:



BELINDA B. ANDERSON, MMC
CLERK OF COUNCIL



LINDA SLOCUM
PRESIDENT OF COUNCIL

POSTED: 01/05/2021

EFFECTIVE DATE: 2/03/2021

EXHIBIT A

“CHAPTER 703”

Unlawful Discrimination

703.01 Declaration of Policy:

- A. It is declared to be the policy of the City of Oberlin, in the exercise of its police powers, for the protection of the public health, safety, and general welfare, and for the maintenance of peace and good government, to assure equal opportunity to all persons, free from restrictions because of sexual orientation, gender identity or expression. This ordinance is established as a means of enforcement of that policy and shall be liberally construed for the accomplishment of that purpose.

703.02 Definitions.

As used in this Chapter:

- (a) “Aggrieved individual” means an individual who claims to have been injured by an unlawful discriminatory act or practice described in this Chapter.
- (b) “Code Administrator” means that individual appointed to be the Code Administrator pursuant to the provisions of the Oberlin Codified Ordinances.
- (c) “City” means the City of Oberlin Ohio.
- (d) “Commercial Purposes” means the conduct of any activity for financial gain but does not include the non-secular activities of a Religious Organization in the engagement of the exercise of its religion.
- (e) “Commission” means the Oberlin Human Relations Commission or such comparable agency as Council may approve.
- (f) “Common use areas” means rooms, spaces, or elements inside or outside a building that are made available for the use of residents of the building or their guests, and includes, but is not limited to, hallways, lounges, lobbies, laundry rooms, refuse rooms, mail rooms, recreational areas, and passageways among and between buildings.
- (g) “Complainant” means an Aggrieved Individual who, pursuant to the provisions of this chapter, files with the Code Administrator a written Complaint alleging an unlawful discriminatory act or practice.
- (h) “Covered multifamily dwellings” means buildings consisting of four or more units if such buildings have one or more elevators and ground floor units in other buildings consisting of four or more units.

- (i) “Discriminate” means to differentiate and treat differently, including to segregate or separate.
- (j) “Employee” means an individual employed by any Employer but does not include any individual employed in the domestic service of any person.
- (k) “Employer” includes any person who regularly employs for compensation four or more individuals, excluding the Employer’s parent(s), spouse, and children, including any person acting directly or indirectly in the interest of an Employer, provided “Employer” does not include the State of Ohio, an agency of State of Ohio or the federal government. The term “Employer” shall include the City.
- (l) “Employment Agency” includes any person regularly undertaking, with or without compensation, to procure opportunities for employment or to procure, recruit, refer, or place employees.
- (m) “Gender Identity or Expression” shall have the same meaning as is set forth in Section 157.01 of these Codified Ordinances.
- (n) “Hearing Officer” means a neutral independent contractor, licensed to practice law in the State of Ohio, hired by the City, to conduct an administrative hearing based on a Complaint filed pursuant to the provisions of this Chapter.
- (o) “Labor organization” includes any organization that exists, in whole or in part, for the purpose of collective bargaining or of dealing with Employers concerning grievances, terms or conditions of employment, or other mutual aid or protection in relation to employment.
- (p) “Law Director” means the individual appointed by Council, pursuant to Article XVIII of the Oberlin Charter, or his or her assistant(s).
- (q) “Person” includes one or more individuals, partnerships, associations, organizations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, and other organized groups of individuals. "Person" as applied to partnerships or other associations, includes their members and as applied to corporations, includes those officers having control over any Unlawful Discriminatory Act falling within this chapter.
- (r) “Place of Public Accommodation” means any inn, restaurant, cafeteria, hotel, motel, bank or other financial services institution, barbershop, public conveyance by air, land, or water, theater, store or other place for the sale of merchandise or for the provision of services to the public, or any other place where the accommodations, advantages, facilities, or privileges are made available to the public, provided it shall not apply to an agency of government other than the City.

- (s) “Protected Class” means a classification of individuals based on one or more of the following characteristics: Sexual Orientation, Gender Identity or Expression.
- (t) “Public Use Areas” means interior or exterior rooms or spaces of a privately owned building that are made available to the public.
- (u) “Religious Organization” means a “Place of Worship” as defined in Section 1321.71 of the City of Oberlin Zoning Ordinance, a not-for profit church or integrated auxiliary of a church, as those terms are used by the United States Internal Revenue Service and any school that incorporates substantial religious teachings or religious practices of that church in that school. Religious Organization does not include any hospital or medical facility that offers medical services to the public.
- (v) “Respondent” means the person who is alleged to have committed or is alleged to be committing unlawful discriminatory act(s) or practices and who is identified in a written Complaint filed by a Complainant.
- (w) “Sexual Orientation” shall have the same meaning as is set forth in Section 157.01 of these Codified Ordinances.
- (x) “Unlawful discriminatory practice” means any act or practice prohibited by this Chapter.

703.03 Unlawful Discriminatory Employment Practices.

- (a) It shall be an unlawful discriminatory employment practice:
 - (1) For any Employer, because of an individual being in a Protected Class, to discharge without just cause, to refuse to hire, or otherwise to discriminate against that individual with respect to hiring, compensation, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment.
 - (2) For an Employment Agency or personnel placement service, because of an individual being in a Protected Class, to do any of the following:
 - A. Refuse or fail to accept, register, classify properly, or refer for employment, or otherwise discriminate against any individual;
 - B. Comply with a request from an Employer for referral of applicants for employment, if the request directly or indirectly indicates that the Employer fails to comply with the provisions of this chapter.
 - (3) For any Labor Organization to do any of the following:

- A. Limit or restrict its membership based on an individual being in a Protected Class;
 - B. Discriminate against, limit the employment opportunities of, or otherwise adversely affect the employment status, wages, hours, or employment conditions of any individual as an employee because of that individual being in a Protected Class.
- (4) For any Employer or Labor Organization to discriminate against any individual because of that individual being in a Protected Class, in admission to, or employment in, any program established to provide apprentice training.
- (5) For any Employer, employment agency, personnel placement service, or labor organization, prior to employment or admission to membership, to do any of the following:
- A. Elicit or attempt to elicit any information concerning the Protected Class status of an applicant for employment or membership;
 - B. Use any form of application for employment, or personnel or membership blank, seeking to elicit information regarding an individual's Protected Class status;
 - C. Utilize in the recruitment or hiring of individuals any employment agency, personnel placement service, training school or center, labor organization, or any other employee-referring source known to discriminate against individuals because of their being in a Protected Class.
- (d) This section does not apply to a Religious Organization with respect to the employment of an individual of a particular religion to perform work connected with the carrying on of the activities of the Religious Organization.
- (e) Whoever violates this section is guilty of an unlawful discriminatory employment practice.

703.04 Unlawful Discriminatory Housing Practices.

In addition to any other remedy provided by state or federal law, the provisions of sections 703.05, 703.06 and 703.07 below shall be applicable to alleged violations of Chapter 1185 of these Codified Ordinances as they relate to Unlawful Discrimination based upon Sexual Orientation, Gender Identity or Expression.

703.05 Unlawful Discriminatory Practices in Public Accommodations.

- (a) No owner, operator, or manager of a place of Public Accommodation shall deny to any individual or permit any employee to deny to any individual, except for reasons applicable alike to all individuals regardless of them being in a Protected Class, the full enjoyment of the accommodations, advantages, facilities, or privileges of the place of Public Accommodation.
- (b) No person shall aid, abet, or participate in the doing of any act declared to be an unlawful discriminatory practice under this section.
- (c) Nothing in this section shall prohibit a Religious Organization, from limiting its offerings of goods, services, facilities, and accommodations to persons of the same religion, or from giving preference to such persons, provided that such offerings mentioned above are not, in fact, offered for commercial purposes or supported by public funds.
- (d) Whoever violates this section is guilty of unlawful discrimination in a place of Public Accommodations.

703.06 Proceedings on Complaint.

- (a) Filing of the Complaint.
 - (1) A Complainant may file with the Code Administrator a written Complaint, in a form prescribed by the Code Administrator, sworn under oath which alleges facts and circumstances, including the location, date(s), and time(s), of an unlawful discriminatory act(s) or practices, that such acts did or are occurring within the City limits, that the discrimination was directed at the Complainant, and which identifies the person who committed or continues to commit the alleged unlawful discriminatory act(s) or practices. At the time of the filing of the Complaint, the Complaint shall indicate whether the Complainant is agreeable to mediation before the Commission as is provided in this chapter.
 - (2) The Complaint shall not be accepted by the Code Administrator if any of the following apply:
 - A. The Complaint is presented to the Code Administrator more than 180 days following the date that the Complainant discovered or should have discovered using ordinary diligence, the most recent unlawful discriminatory act alleged in the Complaint; or
 - B. No incident location provided in the Complaint is within the City of Oberlin;
 - C. The investigation of the Complaint is required to be conducted pursuant to the terms of a collective bargaining agreement to which the City is a party;

- D. The Complaint fails to include all the information required by (a)(1) of this section.
- E. Upon receiving a Complaint of an alleged unlawful discriminatory act, the Code Administrator shall immediately date-stamp the Complaint and shall mail by certified or registered mail, return receipt requested, a certified copy of the Complaint to the Respondent together with a notice of the availability of voluntary mediation. A copy of the Complaint shall be delivered to the City Manager and the Law Director.
- F. If the Complaint is returned to the Code Administrator marked “refused” or “unclaimed” then the Code Administrator shall mail a copy of the Complaint together with the notice of the availability of voluntary mediation to the Respondent by ordinary U.S. Mail, postage pre-paid.
- G. Within thirty (30) days of the date of receipt of the Complaint by the Respondent or from the mailing of the Complaint by ordinary mail, as the case may be, the Respondent may file a written response to the allegations contained in the Complaint. Such response shall be delivered to the Code Administrator who shall immediately transmit a copy to the Complainant. The response shall indicate the acceptance or non-acceptance of mediation before the Commission. The failure to indicate the acceptance or non-acceptance of mediation shall operate as a non-acceptance.
- H. The Code Administrator shall retain the original date-stamped Complaint and any response thereto and shall maintain a file on the matter during the pendency of all actions related to the Complaint and for so long thereafter as is necessary to comply with the City’s applicable Records Retention Schedule.
- I. If the Complainant and the Respondent have agreed to mediation, the Code Administrator shall forward a copy of the Complaint, any reply and all other papers associated with the Complaint or reply to the Chair of the Commission.

(b) Commission: Initial Actions.

- (1) Upon receipt of the Complaint, reply and all other associated papers and except as otherwise provided in this section, the Chair of the Commission shall appoint one of its members who is qualified and otherwise disinterested, to mediate the matters that are the subject of the Complaint and make recommendations.
- (2) Mediation shall be conducted in accordance with such rules and procedures as the Commission may have established as approved by Council. At the conclusion of the mediation, and unless the Complainant and Respondent shall have resolved the matter(s) that are the subject of the Complaint, the member who has been appointed to mediate shall issue a written recommendation, together with findings and

conclusions supporting the recommendation to the Law Director with a copy to the Code Administrator. The recommendation shall be to either:

- A. Dismiss the Complaint; or
- B. Forward the Complaint to a Hearing Officer.

(3) Within thirty (30) days following the Law Director's receipt of the recommendation, the Law Director shall either:

- A. Seek to appoint a Hearing Officer who shall conduct an administrative hearing; or,
- B. Issue a notice of dismissal by ordinary United States Mail to the Respondent and the Complainant, with a copy to the Code Administrator. Such notice shall state the reason(s) for the dismissal. The Notice of Dismissal shall be deemed received and properly served upon the Respondent and the Complainant five (5) days following the mailing thereof. A dismissal may be appealed pursuant to the provisions of Chapter 2506 of the Ohio Revised Code.
- C. If the Complainant and the Respondent have not agreed to mediate before the Commission or if no written response has been received from the Respondent, then the Law Director shall elect to proceed under sections 3(A) and (B) above.

(4) If the Complainant and Respondent shall have resolved the matters that are the subject of the Complaint, the Chair of the Commission shall forward a written notice of such resolution to the Code Administrator and a copy to the Law Director together with any conditions, stipulations, terms or other components of the resolution.

(c) Hearing Officer, Final Decision, Remedies, and Appeal.

(1) If a Hearing Officer is appointed, the Hearing Officer shall have the authority to:

- A. Conduct an administrative hearing;
- B. Provide to all the parties, witnesses, and the Law Director timely notice of the hearing date, time, and location;
- C. Set, change as necessary, and timely communicate to the parties such reasonable procedural rules as the Hearing Officer shall deem appropriate;
- D. Issue subpoenas and direct the exchange of discovery;
- E. Dismiss the Complaint if the Complainant fails to appear for the Administrative hearing.

- (2) At the conclusion of the administrative hearing the Hearing Officer shall issue to the parties, with copies to the Law Director and the Code Administrator, a final written decision to include findings of fact and conclusions of law:
 1. If the Hearing Officer finds the Respondent did engage in, or continues to engage in, an unlawful discriminatory act or practice under this chapter, and the Hearing Officer, in the Hearing Officer's sole discretion, deems it appropriate, the Hearing Officer's final written decision may include the issuance to the Respondent of orders to cease and desist and the imposition upon the Respondent of such other sanctions as are provided in this Chapter; or
 2. If the Hearing Officer, in the Hearing Officer's sole discretion, deems it appropriate, the Hearing Officer's final written decision may be a dismissal of the Complaint.
- (3) If the final decision of the Hearing Officer includes the issuance to the Respondent of orders to cease and desist the unlawful discriminatory acts or practices, such orders to cease and desist shall specify a time for the Respondent's compliance.
- (4) The final decision of the Hearing Officer may include such other relief that the Hearing Officer deems appropriate that is not inconsistent with the provisions of this Ordinance. The cost of the Hearing Officer's services shall not be assessed against the Respondent. Attorney fees, if any, shall not be assessed against the Respondent. Damages and other expenses incurred by the Complainant shall not be assessed against the Respondent.
- (5) The final decision of the Hearing Officer may include the imposition upon the Respondent of a civil penalty payable to the City as follows:
 - A. If division (5)(B) or (5)(C) of this section does not apply, a civil penalty in an amount not to exceed one thousand dollars (\$1,000);
 - B. If division (5)(C) of this section does not apply and if the Respondent has been found by the Hearing Officer to have been previously determined to have committed one violation of this Chapter during the five-year period immediately preceding the date on which a Complaint was filed with the Code Administrator, a civil penalty in an amount not to exceed two thousand five hundred dollars (\$2,500);
 - C. If the Respondent has been found by the Hearing Officer to have been previously determined to have committed two or more violations of this Chapter during the five-year period immediately preceding the date on which a Complaint was filed with the Code Administrator, a civil penalty in an amount not to exceed five thousand dollars (\$5,000).

- (6) The final decision of the Hearing Officer may not include any orders for reinstatement of employment, refund of monies paid, other mitigation of damages, or any other orders for corrections or sanctions, except as provided in this section.
- (7) The final decision of the Hearing Officer may be appealed pursuant to the provisions of Chapter 2506 of the Ohio Revised Code.
- (d) The final decision issued by the Hearing Officer shall be in a writing served by ordinary United States Mail on the Respondent and the Complainant. The documents shall be deemed received and properly served upon the Respondent five days following the mailing thereof. Copies of the final decision shall also be sent to the Code Administrator and the Law Director.
- (e) City of Oberlin as Respondent.
 - (1) If the Hearing Officer finds that a violation occurred, and the Respondent is the City of Oberlin by action of one of its boards, commissions, departments, divisions, officials, or employees, the Hearing Officer shall issue to the Code Administrator a notice of violation, without any orders and without specifying any sanction, and the Hearing Officer shall take no further action.
 - (2) If the Hearing Officer issues a notice of violation on the Code Administrator, and the Respondent is a board or commission or a Council appointee, at a reasonable time following receipt of the notice of violation, the Oberlin City Council shall take such actions and impose such remedies as it deems appropriate. If the Hearing Officer issues a notice of violation to the Oberlin Code Administrator and the Respondent is a City of Oberlin employee, the respective Council appointee” shall take such actions and impose such remedies as he or she deems appropriate.

703.07 Failure to Comply with a Subpoena. No person shall fail to comply with a subpoena issued by the Hearing Officer. Whoever violates this section is guilty of failure to comply with a subpoena, a misdemeanor of the fourth degree.

703.08 Failure to Comply with an Order of the Hearing Officer. Unless the order issued by the the Hearing Officer has been appealed, no person shall fail to comply with any portion of such order within thirty days following service of the order or such other period as the order provides, whichever is greater. Whoever violates this section is guilty of failure to comply with an order of the Hearing Officer, a misdemeanor of the first degree.

703.09 Failure to Pay Financial Sanctions Imposed by the Hearing Officer. If a civil penalty is imposed by the Hearing Officer on the Respondent, and any portion thereof remains unpaid thirty days following service of the order or following the expiration of the time period designated by the Hearing Officer, the City may institute civil enforcement proceedings against the Respondent.

703.10 Appeal. Nothing in this Chapter shall be construed to preclude any person aggrieved from seeking judicial review of any final administrative decision or order made under this Chapter affecting such person.

703.11 No Liability for Enforcement. Nothing contained in this Chapter is intended to be nor shall be construed to create or form the basis for any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from or by reason of any act or omission in connection with the implementation or enforcement of this Chapter on the part of the City by its officers, employees or agents.

703.12 Preservation of Free Exercise. Nothing in this Chapter shall be interpreted to infringe upon or otherwise interfere with any rights protected by the Free Exercise Clause of the First Amendment to the United States Constitution.

703.13 Other Remedies Not Precluded. Nothing in this Chapter shall preclude nor is it intended to discourage the pursuit of other available remedies, such as reference to the Ohio Civil Rights Commission or the Ohio Equal Employment Opportunity Commission with regard to other occurrences of prohibited discrimination.