

**RECOMMENDED BY: THE MAYOR  
THE COMMITTEE OF THE WHOLE**

**SUBMITTED BY: THE CITY ATTORNEY**

**ORDINANCE NO. 17-121**

**AN ORDINANCE TO ADOPT A NONDISCRIMINATION ORDINANCE FOR THE CITY OF BIRMINGHAM.**

**SECTION 1.**

BE IT ORDAINED by the Council of the City of Birmingham that:

(a) This Ordinance may be referenced as “The City of Birmingham Non-Discrimination Ordinance”.

(b) Purpose and Intent. It is the intent and purpose of this ordinance to protect and safeguard the right and opportunity of all persons to be free from all forms of discrimination, including discrimination based on real or perceived race, color, religion, national origin, sex, sexual orientation, gender identity, disability, or familial status. This ordinance is enacted to promote the public health and welfare of all persons who live and work in the City of Birmingham. It is important for the City to ensure that all persons within the City have equal access to employment, housing, and public accommodations.

(c) Definitions. For the purposes of this ordinance, the following terms shall have the following meanings:

- (1) CITY CONTRACTOR. Any person, corporation, or entity that has a contract to do business with the City of Birmingham.
- (2) DISCRIMINATE, DISCRIMINATION OR DISCRIMINATORY. Any act, policy or practice that, regardless of intent, has the effect of subjecting any otherwise qualified person to differential treatment as a result of that person’s real or perceived race, color, religion, national origin, sex, sexual orientation, gender identity, disability, or familial status.
- (3) EMPLOYEE. Any individual employed by or seeking employment from an employer. It does not include the following:
  - a. Any individual employed by his or her parents, spouse, or child or
  - b. An individual participating in a specialized employment training program conducted by a nonprofit sheltered workshop or rehabilitation facility.
- (4) EMPLOYER. A person who employs one or more employees in the City of Birmingham, or any agent of such person. Employer shall include the City of Birmingham and any City Contractor.

- (5) FAMILIAL STATUS. The state of having or about to be having one or more minor children under the age of eighteen (18) being domiciled with a parent, guardian, or other person having legal custody or who is legally responsible for the care of a child.
- (6) GENDER IDENTITY. 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.
- (7) NATIONAL ORIGIN. An individual's or his or her ancestor's place of origin.
- (8) PLACE OF PUBLIC RESORT, ACCOMMODATION, ASSEMBLAGE, OR AMUSEMENT. 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 of the following:
  - a. Any lodging establishment which contains not more than ~~five~~ three rooms for rent and which is actually occupied by the proprietor of such establishment as a residence.
  - b. Any private club, bona fide membership organization, or other establishment that is not in fact open to the public.
- (9) RELIGION. All aspects of religious belief, observance, and practice.
- (10) SEXUAL ORIENTATION. Actual or perceived homosexuality, heterosexuality, or bisexuality.

(d) Discrimination prohibited. The protection of the right of an otherwise qualified person to be free from discrimination because of that person's real or perceived race, color, religion, national origin, sex, sexual orientation, gender identity, disability, or familial status is recognized as necessary to promote the public health, safety and welfare of citizens and employees within the City. No person shall discriminate against an otherwise qualified person's rights, including, but not limited to, all of the following:

- (1) The right to obtain and hold employment without discrimination.
- (2) The right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement.
- (3) The right to engage in property transactions, including obtaining housing for rental or sale, and including credit for obtaining housing for rental or sale, without discrimination.
- (4) The right to obtain an education free from discrimination in a safe and supportive learning environment in any educational institution.
- (5) The right to exercise any right granted under this ordinance without suffering coercion or retaliation.

(e) Exceptions. Notwithstanding the foregoing, the following are not discriminatory practices prohibited by Section (d) (1):

- (1) 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.
- (2) 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.

(f) Creation of Birmingham Human Rights Commission. The purpose of the Birmingham Human Rights Commission ("Commission") shall be to promote principles of diversity, inclusion, and harmony in the City of Birmingham through education, community events, the provision of advice to the City Council and Mayor, and through receiving complaints made relative to this ordinance.

- (1) Composition. The Commission shall be composed of 11 voting members who shall be broadly representative of the population of the City, including representatives of the communities enumerated in this ordinance. Members shall be residents of the City. The Council shall present a slate of appointments for Council approval as follows:
- a. A representative from each Council District of the City recommended by the councilor for each respective district;
  - b. One representative from a recognized nonprofit organization with missions related to human rights, civil rights or other anti-discrimination perspectives;
  - c. One representative of a business or other employer with its principal place of business within the City.

In addition to the 11 voting members, the chief of police or his or her designee, the fire chief or his or her designee, the city's ADA compliance director or his or her designee and the city's Human Resources Department director or his or her designee shall be non-voting members of the commission. The Council may also designate a member from the Council staff to serve as a non-voting member.

- (2) Terms. Members shall serve a four-year term, provided, however, that two members shall serve an initial term of one year; three members shall serve an initial term of two years; three members shall serve an initial term of three years; and three members shall serve an initial term of four years.
- (3) Governance. The Commission shall elect a chairman, vice-chairman and secretary. The Commission shall formulate its own procedures, and may create task forces or committees as it deems appropriate. These procedures are subject to review by the Law Department and approval of the City Council.
- (4) Responsibilities. The responsibilities of the Commission include managing Commission records and accounts, developing public education programs, providing Training for Commission members, managing citizen complaints, and any other tasks needed to help the Commission perform its functions. It may use the services of attorneys, clerks, or other City government employees or the services of contractors as necessary.
- (5) Activities. The commission shall investigate, advise and report to the Office of the Mayor and each Council member on matters of resolving discriminatory practices, including potential legislative or administrative actions to eliminate discriminatory practices; develop public education programs regarding compliance with this ordinance and equal opportunity and treatment of all individuals; maintain and provide resources and contacts for appropriate local, federal and state agencies for persons complaining of violations of this ordinance and other acts of discrimination; receive and report to the mayor and council complaints related to City operations and contracts; and present an annual report to the mayor and council, which shall include the number and types of complaints received during the year. The commission shall seek to conciliate complaints with the consent of all parties.

(g) Enforcement. Violations of this ordinance are subject to the general penalty provisions in Sec. 1-1-6 of the General Code of the City of Birmingham; provided, however, that violations shall be punishable by fine only. The maximum fine for a first violation shall be \$100.00; the maximum fine for a second violation shall be \$250.00; third and subsequent violations shall be subject to a maximum fine of \$500.00.

**SECTION 2. OTHER REMEDIES.** This ordinance may not be construed to limit any other remedies available under state or federal law.

**SECTION 3. SEVERABILITY.** In the event any section, subsection, subdivision, paragraph, subparagraph, item, sentence, clause, phrase or word of this ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining provisions of this ordinance which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this ordinance.

**SECTION 4. EFFECTIVE DATE.** This Ordinance shall take effect upon its passage and publication as required by law.

Adopted by the Council September 26, 2017 and Approved by the Mayor September 29, 2017



A CERTIFIED COPY  
Lee Frazier, City Clerk  
Birmingham, Al  
*Lee Frazier*