

ORDINANCE NUMBER: _____

AMENDING CHAPTERS 2, 12, and 22

AN ORDINANCE AMENDING ARTICLE V OF CHAPTER 2 OF THE CHARLOTTE CITY CODE ENTITLED “ADMINISTRATION”, ARTICLES II, III AND IV OF CHAPTER 12 ENTITLED “HUMAN RELATIONS”, AND ARTICLE II OF CHAPTER 22 ENTITLED “VEHICLES FOR HIRE”

BE IT ORDAINED by the City Council of the City of Charlotte, North Carolina, that:

Section 1. Article V of Chapter 2 of the Charlotte City Code is amended as follows:

Sec. 2-151. - Policy statement.

It is the policy of the city not to enter into a contract with any business firm that has discriminated in the solicitation, selection, hiring or treatment of vendors, suppliers, subcontractors or commercial customers on the basis of a Protected Class, or on the basis of any otherwise unlawful use of characteristics regarding such vendor's, supplier's, or commercial customer's employees or owners in connection with a city contract or solicitation; provided that nothing in this commercial non-discrimination policy shall prohibit or limit otherwise lawful efforts to remedy the effects of discrimination that has occurred or is occurring in the marketplace.

Sec. 2-152. - Purpose and intent.

It is the intent of the city to avoid becoming a passive participant in private sector commercial discrimination by refusing to procure goods and services from business firms that discriminate in the solicitation, selection, hiring, or treatment of vendors, suppliers, subcontractors, or commercial customers on the basis of a Protected Class in connection with city contracts or solicitations by providing a procedure for receiving, investigating, and resolving complaints of discrimination involving city contracts or solicitations.

Sec. 2-153. - Definitions.

For purposes of this article, the following terms have the meanings indicated unless the context clearly requires a different meaning.

Discrimination means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or treatment of a vendor, supplier, subcontractor or commercial customer on the basis of a Protected Class, or on the basis of any otherwise unlawful use of characteristics regarding such vendor's, supplier's, or commercial customer's employees or owners in connection with a city contract or solicitation; provided that nothing in this definition or article shall prohibit or limit otherwise lawful efforts to remedy the effects of discrimination that has occurred or is occurring in the marketplace.

Gender identity and *gender expression* means having or being perceived as having gender-related identity, expression, appearance, or behavior, whether or not that identity, expression, appearance,

or behavior is different from that traditionally associated with the sex assigned to that individual at birth.

Natural hairstyle means any hair texture, color, type or style of wear historically associated with race or national origin.

Protected Class means a person's race, color, gender, religion, national origin, ethnicity, age, familial status, sex (including sexual orientation, gender identity and gender expression), veteran status, pregnancy, natural hairstyle or disability.

Sexual orientation means a person's actual or perceived emotional, romantic, or sexual attraction to other people which includes, but is not limited to, heterosexuality, homosexuality or bisexuality.

Sec. 2-166. - Mandatory nondiscrimination contract clause.

Every contract and subcontract shall contain or incorporate a nondiscrimination clause that reads substantially as follows:

As a condition of entering into this agreement, the company represents and warrants that it will fully comply with the city's commercial non-discrimination policy, as described in section 2, article V of the City Code, and consents to be bound by the award of any arbitration conducted thereunder. As part of such compliance, the company shall not discriminate on the basis of a Protected Class in the solicitation, selection, hiring, or treatment of subcontractors, vendors, suppliers, or commercial customers in connection with a city contract or contract solicitation process, nor shall the company retaliate against any person or entity for reporting instances of such discrimination. The company shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its subcontracting and supply opportunities on city contracts, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace. The company understands and agrees that a violation of this clause shall be considered a material breach of this agreement and may result in termination of this agreement, disqualification of the company from participating in city contracts or other sanctions.

Sec. 2-167. - Contractor bid requirements.

All requests for bids or proposals issued for city contracts shall include or incorporate a certification to be completed by the bidder or proposer in substantially the following form:

The undersigned bidder or proposer hereby certifies and agrees that the following information is correct:

1. In preparing its enclosed bid or proposal, the bidder or proposer has considered all bids and proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in discrimination as defined in section 2.

2. For purposes of this section, discrimination means discrimination in the solicitation, selection, or treatment of any subcontractor, vendor, supplier or commercial customer on the basis of a Protected Class or any otherwise unlawful form of discrimination. Without limiting the foregoing, discrimination also includes retaliating against any person or other entity for reporting any incident of discrimination.

Sec. 2-168. - Contract disclosure requirements.

Every contract that the city enters into shall include or incorporate a clause that reads substantially as follows:

As a condition of entering into this agreement, the company agrees to:

(a) Promptly provide to the city all information and documentation that may be requested by the city from time to time regarding the solicitation, selection, treatment and payment of subcontractors in connection with this agreement; and

(b) If requested, provide to the city within sixty days after the request a truthful and complete list of the names of all subcontractors, vendors, and suppliers that company has used on city contracts in the past five years, including the total dollar amount paid by contractor on each subcontract or supply contract. The company further agrees to fully cooperate in any investigation conducted by the city pursuant to the city's commercial non-discrimination policy as set forth in section 2, article V of the city code, to provide any documents relevant to such investigation that are requested by the city, and to be bound by the award of any arbitration conducted under such policy. The company understands and agrees that violation of this clause shall be considered a material breach of this agreement and may result in contract termination, disqualification of the company from participating in city contracts and other sanctions.

Section 2. Article II of Chapter 12 of the Charlotte City Code is amended as follows:

Sec. 12-27. - Powers.

Within the limitations provided by law, the community relations committee created under this article has the power to:

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- (9) Render at least annually a written report to the mayor and to the city council and to the chairman and the board of county commissioners. The report may contain recommendations of the committee for legislation or other actions to eliminate or reduce discrimination with respect to Protected Class(es).

Sec. 12-29. - Powers of conciliation division.

Within the limitations provided by law, the conciliation division of the community

relations committee created by this article has the power to:

- (1) Use the facilities and staff of the committee created under this article, as authorized by the committee, to effectuate the purposes and policies of this chapter;
- (2) Receive, initiate, seek to conciliate, and hold hearings on complaints alleging violations of this chapter;
- (3) Provide information on alternate avenues and technical support for relief on complaints alleging violations of this chapter, including those provided under applicable federal and state law.
- (4) Approve or disapprove plans to eliminate or reduce discrimination with respect to a Protected Class;
- (5) Furnish technical assistance required by persons subject to this chapter to further compliance with this chapter;
- (6) Render at least annually a comprehensive written report to the committee created by this article and to the mayor and the city council.

Sec. 12-30. - Complaint procedure.

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(c) If the conciliation division finds that there is no reasonable cause to believe the respondent has violated article III or IV of this chapter, the chairperson shall, within a reasonable time, inform the complaining party, the city attorney, and the respondent of the conciliation division's findings.

Sec. 12-31. - Other civil remedies.

An election to proceed by making a complaint with the conciliation division by a person alleging a violation of article III or IV of this chapter shall not foreclose the right to proceed with any civil remedies available. Violation of articles III or IV of this chapter shall not be punishable as a crime under N.C.G.S. 14-4 or any other law.

Nothing in articles III or IV of this chapter shall be interpreted or applied so as to create any unique requirement, power, or duty or liability in conflict with any existing federal or state law or either the federal or state constitutions. Other than an assertion that a respondent employer is not a covered employer due to the size of its employee workforce, any and all legal rights, remedies and defenses to a charge of discrimination recognized under applicable federal and state law shall also be applicable to a charge of discrimination under this ordinance.

Nothing in the requirements of articles III and IV of this chapter shall deny the use of constitutionally or otherwise legally protected speech nor shall the requirements of articles III and IV of this chapter deny any entity or individual their constitutional or statutory protections against compelled speech or expression.

Sec. 12-32. - No Private Cause of Action

Violations of articles III or IV of this chapter is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the City of Charlotte, its agencies, departments or any other entities, or any officers, elected officials, employees, or agents thereof, or against the Charlotte-Mecklenburg Community Relations Committee (as that term is defined in this chapter) or any other person, employer or respondent.

Section 3. Article III of Chapter 12 of the Charlotte City Code is amended as follows:

Sec. 12-57. - Definitions.

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

Gender identity and *gender expression* means having or being perceived as having gender-related or being perceived as having gender-related identity, expression, appearance, or behavior, whether or not that identity, expression, appearance, or behavior is different from that traditionally associated with the sex assigned to that individual at birth.

Natural hairstyle means any hair texture, color, type or style of wear historically associated with race or national origin.

Protected Class means a person's race, color, gender, religion, national origin, ethnicity, age, familial status, sex (including sexual orientation or gender identity), veteran status, pregnancy, natural hairstyle or disability.

Place of public accommodation means a business, accommodation, refreshment, entertainment, recreation, or transportation facility of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages or accommodations are extended, offered, sold or otherwise made available to the public. This term shall not include religious organizations.

Religious Organization means a church, mosque, synagogue, temple, non-denominational ministry, interdenominational and ecumenical organization, religiously operated school, mission organization, faith-based social agency, association, society or other entity primarily devoted to the study, practice, or advancement of religion.

Sexual orientation means a person's actual or perceived emotional, romantic, or sexual attraction to other people which includes, but is not limited to, heterosexuality, homosexuality or bisexuality.

Sec. 12-58. - Prohibited acts.

(a) It shall be unlawful to deny any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation because of a Protected Class.

(b) It shall be unlawful to make, print, circulate, post, mail or otherwise cause to be published a statement, advertisement, or sign which indicates that the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation will be refused, withheld from, or denied any person because of a Protected Class, or that any person's patronage of or presence at a place of public accommodation is objectionable, unwelcome, unacceptable, or undesirable because of a Protected Class provided, however, this section does not apply to a private club or other establishment not, in fact, open to the public.

Section 4 Article IV of Chapter 12 of the Charlotte City Code is amended as follows:

Sec. 12-83. Prohibited employment discrimination.

It shall be unlawful for any employer because of the Protected Class of any person, to fail or refuse to hire, discharge or otherwise discriminate against that person with respect to hire, tenure, promotion, transfer, compensation, terms, conditions, position or privileges of employment, or any matter directly or indirectly related to employment.

- (a) All complaints of violation of this section shall be received by the conciliation division of the Community Relations Committee.
- (b) In lieu of commencing its review of the complaint as set forth in section 12-31 of this chapter, the conciliation division may, at its discretion, require complaints alleging violation of this section, to first be submitted to the applicable federal or state authority for review and appropriate action. Should the applicable federal or state authority determine that it does not have jurisdiction or authority over the subject matter of the complaint, the conciliation division shall commence its review of the complaint as set forth in article II of this chapter.

Sec. 12-84. Exemptions to 12-83

Notwithstanding the foregoing the following are not discriminatory practices prohibited under article IV of this chapter:

- (a) A Religious Organization that employs an individual to perform work associated with the Religious Organization that insists employees adhere to the tenets of the Religious Organization as a condition of employment.

An employee may express the employee's sincerely held religious or moral beliefs and commitments in the workplace in a reasonable, non-disruptive and non-harassing way on equal terms with similar types of expression of beliefs or commitments allowed by the employer in the workplace, unless the expression is in direct conflict with the essential business related interests or needs of the employer.

(b) Nothing in this article shall require an employer to hire or retain unqualified individuals or to retain employees when there is a legitimate non-discriminatory or non-retaliatory reason to terminate employment.

(c) Nothing in this article shall prohibit an employer from requiring an employee during the employee's hours of work to adhere to reasonable dress or grooming standards that are due to a business necessity and that are not prohibited by federal, state or local law.

(d) An employer that observes the conditions of bona fide seniority system or affirmative action plan that is not a pretext to evade the purposes of this article. 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 federal or state law.

Section 5. Article II of Chapter 22 of the Charlotte City Code is amended as follows:

Sec. 22-158(a)(5). - Conduct.

(a) No for-hire company, for-hire vehicle owner, and/or for-hire driver shall:

(5) Refuse or neglect to transport any person on the basis of a Protected Class as that term is defined in chapter 12 of this ordinance.

Section 6. Severability Clause

If any provision of this ordinance or its application to any person or circumstances is held invalid or unconstitutional by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this ordinance, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this ordinance are declared to be severable.

Section 7. Sections 1, 2, 3 and 5 of this ordinance shall be effective on October 1, 2021.

Section 4 of this ordinance shall be effective on January 1, 2022.

Approved as to form

City Attorney