

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES OF ATHENS-CLARKE COUNTY, GEORGIA, BY ADOPTING A NEW CHAPTER 6-21, "**UNLAWFUL DISCRIMINATION**" IN TITLE 6 "LICENSES AND BUSINESS REGULATION" AND FOR OTHER LAWFUL PURPOSES

WHEREAS, the Mayor and Commission of the Unified Government of Athens-Clarke County are authorized by the Charter of Athens-Clarke County to provide for the safety, health, safety, peace, security, and general welfare of the community members and visitors of Athens-Clarke County;

WHEREAS, the Mayor and Commission of the Unified Government of Athens-Clarke County is committed to taking consistent action to expand inclusion, diversity, and equity throughout Athens-Clarke County;

WHEREAS, the Unified Government is committed to building an Athens-Clarke County where every community member and visitor belongs by prioritizing inclusion, diversity, and equity throughout government policies, processes, and decision-making;

WHEREAS, the Mayor and Commission find that building an Athens-Clarke County where every community member and/or visitor belongs requires the establishment and enforcement of laws that support inclusion, diversity, and equity for all community members and visitors in business dealings throughout this jurisdiction;

WHEREAS, the Mayor and Commission find that discrimination in the business dealings of its community members and/or visitors harms the persons involved, impairs the ability of the Unified Government to attract new businesses and new community members and visitors, and is inconsistent with the Unified Government's goal to embrace inclusion and diversity while taking action to increase equity;

WHEREAS, the Unified Government was founded in part on a principle of non-discrimination with an emphasis on encouraging meaningful involvement in its operations by all of its community members and visitors, particularly those who are members of a minority, marginalized, or other traditionally disadvantaged group;

WHEREAS, the Mayor and Commission find that the 14th Amendment to the United States Constitution provides for the equal protection of all citizens under the laws of the several states and of the United States, and thereby empowers the Unified Government to take action to provide protection to all persons within Athens-Clarke County;

WHEREAS, the State has expressly delegated to the Unified Government of Athens-Clarke County in its Charter the power to regulate, through its police powers, matters that touch the health, safety, and welfare of the general public;

WHEREAS, the Mayor and Commission expressly finds that it should be subject to the same rules and same policies that it expects its community members, visitors, and businesses to follow;

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

WHEREAS, the Mayor and Commission therefore finds it advisable and necessary to prohibit certain instances of discrimination where the Unified Government'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 Mayor and Commission specifically find it advisable and necessary to prohibit businesses licensed or permitted by the Unified Government to conduct business in Athens-Clarke County from discriminating against employees, community members, visitors, and members of the public; and

WHEREAS, the County acknowledges and relies upon the statement by the Supreme Court of Georgia in *McKinney v. City of Atlanta*, that the County "has the authority to enact anti-discrimination laws under its general police power."

NOW THEREFORE, the Mayor and Commission of Athens-Clarke County, Georgia, hereby ordains and orders that the Code of Ordinances of Athens-Clarke County shall be amended as follows:

#### SECTION 1

Title 6, Licenses and Business Regulations, of the Code of Ordinances of Athens-Clarke County shall be amended by adding a new Chapter 6-21, titled "Unlawful Discrimination," which chapter shall read as follows:

#### **CHAPTER 6-21. UNLAWFUL DISCRIMINATION**

**Sec. 6-21-1. Purpose and Intent.** It is the purpose and intent of the Mayor and Commission of Athens-Clarke County 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. The Mayor and Commission's purpose in enacting this ordinance is to promote the public health and welfare of all persons who live and work in Athens-Clarke County. It is important for the Unified Government to ensure that all persons within Athens-Clarke County have equal access to employment, housing, and public accommodations.

**Sec. 6-21-2. Definitions.** For the purposes of this ordinance, the following terms shall have the following meanings:

- (1) “Age” means an individual's status as having obtained forty or more years of age.
- (2) “Business” means any person or entity conducting business within Athens-Clarke County, which is required to obtain a license or permit, or who obtains any benefit from the Unified Government including, but not limited to a land disturbance or building permit, variance, rezoning, tax abatement, or other tangible benefit provided for by the Unified Government.
- (3) “Discriminate, discrimination, or discriminatory” means any act, policy, or practice that 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 veteran status.
- (4) “Employee” means any individual employed by or seeking employment from an employer, excluding any individual employed by his or her parents, spouse, or child.
- (5) “Employer” means a person or entity who employs one or more employees in Athens-Clarke County, or any agent of such person. This definition shall include the Unified Government of Athens-Clarke County.
- (6) “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.
- (7) “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.
- (8) “Marital status” means an individual's past, current, or prospective status as single, married, domestically partnered, in a civil union, divorced, or widowed.
- (9) “National origin” means an individual's, or an individual's ancestors', place of origin.
- (10) “Place of public resort, accommodation, assemblage, or amusement” means any place, store, or other establishment, either licensed or unlicensed, that supplies accommodations or that solicits or accepts the patronage or trade of the general public, or that is supported directly or indirectly by government funds.
- (11) “Religion” means all aspects of religious belief, observance, and practice.

- (12) “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.
- (13) “Respondent” means the person or business alleged to have violated this Chapter.
- (14) “Retail establishment” means an entity or business physically located in Athens-Clarke County that serves the general public by providing products or services to the final end user or consumer, and shall include (but is not limited to) restaurants or other businesses selling prepared food to customers, whether on premises or remotely.
- (15) “Sexual orientation” means actual or perceived sexuality, homosexuality, heterosexuality, or bisexuality.
- (16) “Veteran/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.

**Sec. 6-21-3. Civil Rights Declared.** The right of an otherwise qualified person to be free from discrimination because of that person's actual or perceived race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteran/military status is recognized as and declared to be a civil right. This right shall include, but not be limited to, all of the following:

- (1) The right to obtain and hold employment and the benefits associated therewith 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 without discrimination.
- (3) The right to be served or receive service at retail establishments without discrimination.
- (4) The right to engage in property transactions, including obtaining housing for rental or sale and credit therefor, without discrimination.
- (5) The right to exercise any right granted under this ordinance without suffering coercion or retaliation.

**Sec. 6-21-4. Exceptions.** Notwithstanding the foregoing, the following are not discriminatory

practices prohibited by Sec. 6-21-3 of this Chapter and shall not form the basis of a Complaint under Sec. 6-21-5:

- 1) A religious organization that employs an individual of a particular religion to perform work connected with the organization who insists that the employee adhere to the tenets of the religious organization as a condition of employment.
- 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.
- 3) A business is not required to hire or retain unqualified or incompetent personnel.
- 4) 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.
- 5) This ordinance shall not apply to a bona fide nonprofit private club.
- 6) A business is not required to make changes to any existing facility that would require a building permit, except as otherwise required by law.
- 7) 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.
- 8) 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.

**Sec. 6-21-5. Enforcement.** Subject to the procedures developed by the Unified Government, the Unified Government shall receive, initiate, investigate, seek to conciliate, hold hearings, on and/or pass upon complaints alleging violations of this ordinance.

- (1) Any person who believes they have been aggrieved by an alleged breach or violation of Sec. 6-21-3 of this Chapter may file a complaint with the County Attorney on a form to be provided by the Unified Government. 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 Chapter, and verification by the complainant under oath that the allegations of the complaint are true.
- (2) Any such complaint must be filed within ninety (90) calendar days of the alleged act of discrimination.

- (3) The County Attorney or his or her designee will be responsible for conducting an initial inquiry into the allegations of the complaint and attempting to negotiate a conciliatory resolution to the complaint. If those efforts are not successful within 30 days of the filing of the complaint and the County Attorney finds reasonable grounds that such unlawful conduct occurred, the County Attorney will certify that their efforts have not resolved the complaint, and the written complaint will be delivered to the Athens-Clarke County Police Department for personal service on the respondent to institute an administrative action pursuant to Section 1-5-1 of the Code of Athens-Clarke County. The County Attorney is authorized to utilize alternative enforcement measures, including without limitation, informal mediation and entry of negotiated consent orders. If the Attorney does not find reasonable grounds that such unlawful conduct occurred, the Attorney shall notify the claimant in writing, and the claimant shall have the right to institute an administrative proceeding with respect to such determination pursuant to Section 1-5-1 of the Code of Athens-Clarke County.
- (4) Upon receipt, the Chief of Police or his or her designee shall cause the complaint and a summons to be personally served on the respondent within fourteen (14) business days of receipt by their office of a properly filed complaint. The summons shall direct the respondent to appear before the Administrative Hearing Officer of Athens-Clarke County, pursuant to Sec. 1-5-1 of the Code of Ordinances of Athens-Clarke County, on a date and time certain for a hearing. In the event the Chief of Police or their designee is unable to have the complaint and summons personally served on the respondent within fourteen (14) business days, the Chief of Police or their designee shall continue to attempt service on a regular basis until such time as the respondent is served or, if service cannot be effected after reasonable diligence, until sixty (60) calendar days from the date the complaint is filed. If service cannot be perfected in that time, service shall be accomplished by leaving the complaint posted to the door of the location identified in the business license records of the Unified Government so that the notice is clearly visible and notorious. Such posting shall constitute actual notice and service under this section.
- (5) The respondent may file with the Administrative Hearing Officer an answer to the complaint at any time prior to the hearing. If the respondent intends to rely upon any Exception under Sec. 6-21-4, the respondent shall provide written notice to the complainant and the Administrative Hearing Officer no less than 3 business days before the hearing scheduled in the matter of the exception being relied upon.
- (6) Prior to the hearing, the Administrative Hearing Officer shall review the complaint and answer, if any, to determine: (1) whether the complaint is in conformity with the requirements of this Chapter; and (2) whether the proceeding is preempted by Federal or State law. Upon such determination, the Administrative Hearing Officer shall enter a written order, expressly stating the foregoing determinations and either dismissing the complaint or proceeding with the scheduled hearing of the matter on the merits of the alleged violation.

- (7) The Georgia Rules of Evidence shall inform, but need not control, the introduction of evidence before the Administrative Hearing Officer.
- (8) Each side to the complaint shall have the ability to compel the attendance of witnesses by subpoena issued by the Administrative Hearing Officer.
- (9) The complainant shall have the burden of proof, which must be established by a preponderance of the evidence, except for the application of any exceptions under Section 6-21-4, upon which the respondent shall bear the burden of proof, also by a preponderance of the evidence.
- (10) Each side shall be entitled to representation by counsel of their choice at their own expense.
- (11) The losing party shall have the right to appeal to the Superior Court of Athens-Clarke County pursuant to a writ of *certiorari*.

**Section 6-21-6. Unified Government Contracting.** The Unified Government shall require its vendors and contractors to abide by this Chapter and shall require, as a part of the contracting process an affirmation by the vendor or contractor that it will abide by and be bound by this Chapter and that it will require any and all subcontractors operating pursuant to the contract with the Unified Government to abide by and be bound by this Chapter.

**Section 6-21-7. Penalty.**

- (1) Any person or business found by the Administrative Hearing Officer to have violated any provision of this Chapter shall be subject to a civil penalty of \$1,000 for each violation.
- (2) Any business penalized three (3) times under this Chapter shall lose their right to operate in Athens-Clarke County. The County Attorney or his or her designee shall expressly inform the respondent within 30 days of the time a third complaint under this Chapter is received by the County Attorney that the business runs the risk of the loss of their business license (and any other licenses issued by the Unified Government) upon a finding of a violation of this Chapter.
- (3) Nothing in this Chapter shall prohibit or impair the Unified Government from combining the hearing called for in this Chapter with other administrative procedures called for under the Code of Ordinances of Athens-Clarke County or the laws of the State of Georgia.

**Section 6-21-8. Voluntary Mediation.**

- (1) Within fourteen (14) business days of the County Manager's receipt of a properly

filed complaint, the County Attorney shall provide complainant and respondent, in writing, with notice of and instructions regarding the County's voluntary mediation program for discrimination complaints, such notice to be sent to ensure delivery to the recipient.

- (2) Upon written request of the complainant and/or the respondent, the County Attorney or their designee shall provide the services of a private mediator to conduct non-binding mediation between the complainant and the respondent. The mediator shall be recommended by the County Attorney from a list of qualified mediators. Such mediation services shall be paid by the parties, sharing equally. The mediation shall be completed, and the County Attorney notified by the mediator of the result within thirty (30) days of referral to the mediator.
- (3) Any mediation hereunder shall be conducted in accordance with procedures established by the mediator.
- (4) The enforcement proceeding before the Hearing Officer shall be stayed during the time that the matter is referred to mediation.

**Sec. 6-21-9. No Private Claim Created.** Other than as provided in this Chapter, no other substantive right, claim, or remedy against any person or entity shall be created by this Chapter.

**Sec. 6-21-10. Other Remedies Preserved.** This ordinance shall not be considered exclusive and may not be construed to limit any other rights, privileges, or remedies available to either party to the dispute under local, state, or federal law.

#### SECTION 2

This ordinance shall take effect immediately after passage.

#### SECTION 3

The County Manager, in collaboration with the Inclusion Office, is authorized to develop such policies and procedures as are necessary to give effect to this Ordinance. The policies or procedures authorized by this Chapter shall be created as soon as practicable and may be amended as necessary to give effect to this Ordinance.

#### SECTION 4

The Athens-Clarke County Public Information Office shall create and implement a program to inform community members, visitors, and businesses of this Ordinance, to include direct mail information to all businesses holding an Athens-Clarke County occupation tax certificate (AKA a “business license”), as determined by the Athens-Clarke County Finance Department, and any entity doing business with the Unified Government.



SECTION 5

(a) It is hereby declared to be the intention of the Mayor and Commission of the Unified Government of Athens-Clarke County that all sections, paragraphs, sentences, clauses, and phrases of this Ordinance are and were, upon their enactment, believed by the Mayor and Commission to be fully valid, enforceable, and constitutional.

(b) It is hereby declared to be the intention of the Mayor and Commission of the Unified Government of Athens-Clarke County that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Chapter is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. It is hereby further declared to be the intention of the Mayor and Commission that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this Ordinance is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this Ordinance.

(c) In the event that any phrase, clause, sentence, paragraph or section of this Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Mayor and Commission of the Unified Government of Athens-Clarke County that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or sections of the Ordinance and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs, and sections of the Ordinance shall remain valid, constitutional, enforceable, and of full force and effect.

SECTION 6

All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed. Notwithstanding the foregoing, all provisions of Title 9 of the Code of Athens-Clarke County, Georgia related to Zoning and Development Standards are hereby saved from repeal and shall remain in full force and effect. For purposes of the provisions of this Ordinance as set forth above, the terms Chapter and Ordinance may be used interchangeably herein.