

BOROUGH OF NEWTOWN

ORDINANCE NO. _____

**AN ORDINANCE OF THE BOROUGH OF NEWTOWN,
COUNTY OF BUCKS, COMMONWEALTH OF
PENNSYLVANIA ESTABLISHING THE NEWTOWN
BOROUGH HUMAN RELATIONS COMMISSION AND
PROHIBITING DISCRIMINATION IN HOUSING,
EMPLOYMENT, PUBLIC ACCOMODATIONS AND
ACCESS TO EDUCATIONAL INSTITUTIONS.**

WHEREAS, the Council of the Borough of Newtown, County of Bucks, Commonwealth of Pennsylvania is empowered to establish ordinances providing for the health, welfare and safety of Borough residents and visitors; and

WHEREAS, Council has determined that it is in the best interests of the health, safety and general welfare of the residents and businesses of Newtown Borough to establish the Newtown Human Relations Commission and prohibit discrimination within the Borough of Newtown.

NOW THEREFORE, the Council of the Borough of Newtown, County of Bucks, and Commonwealth of Pennsylvania does hereby enact and ordain the following:

SECTION 1. The Code of Ordinances of the Borough of Newtown is hereby amended by the addition of Chapter 97, Newtown Human Relations Commission, as follows

§ 97.1. Purpose and Declaration of Policy.

1. In order to ensure that all persons, regardless of actual or perceived race, color, sex, religion, ancestry, genetic information, national origin, sexual orientation, gender identity or expression, familial status, marital status, age, mental or physical disability, use of guide or support animals and/or mechanical aids enjoy the full benefits of citizenship and are afforded equal opportunities for employment, housing and the use of public accommodations, and to have equal access to postsecondary educational institutions, it is necessary that appropriate legislation be enacted.

2. It is hereby declared to be the public policy of Newtown Borough to foster the employment of all individuals in accordance with their fullest capacities regardless of actual or perceived race, color, sex, religion, ancestry, genetic information, national origin, sexual orientation, gender identity or expression, familial status, marital status, age, veteran status, mental or physical disability, use of guide or support animals and/or mechanical aids, and to safeguard their right to obtain and hold employment without such discrimination, to assure equal opportunities to all individuals and to safeguard their rights to public accommodation and to secure housing accommodation and commercial property without regard to actual or perceived race, color, sex, religion, ancestry, genetic information, national origin, sexual orientation, gender identity or expression, familial status, marital status, age, mental or physical disability, use of guide or support animals and/or mechanical aids, and to have equal access to postsecondary educational institutions without regard to actual or perceived race, color, sex, religion, ancestry, genetic information, national origin, sexual orientation, gender identity or expression, familial status, marital status, age, mental or physical disability, use of guide or support animals and/or mechanical aids.

3. Nothing in this Ordinance shall be construed as supporting or advocating any particular doctrine, position, point of view, lifestyle or religious view. To the contrary, it is the intention of this Ordinance that all persons be treated fairly and equally, and it is the express intent of this Ordinance to guarantee fair and equal treatment under the law to all people of the Borough.

4. This Ordinance shall be deemed an exercise of the police power of the Newtown Borough for the protection of the public welfare, prosperity, health and peace of the Newtown community.

§ 97.2. Definitions.

1. The following words and phrases when used in this Ordinance shall have the meanings given to them in this subsection:

BOROUGH — the Borough of Newtown, County of Bucks, Commonwealth of Pennsylvania.

BOROUGH COUNCIL — the Borough Council of Newtown Borough.

DISCRIMINATION — any discriminatory act(s) taken by any person, employer, employment agency, labor organization or public accommodation on the basis of actual or perceived race, color, sex, religion, ancestry, genetic information, national origin, sexual orientation, gender identity or expression, familial status, marital status, age, mental or physical disability, use of guide or support animals and/or mechanical aids.

DISCRIMINATORY ACTS — all acts defined in the Pennsylvania Human Relations Act as unlawful discriminatory practices. The fact that the Pennsylvania Human Relations Act would not define a practice as unlawful when that practice is taken on the basis of actual or perceived sexual orientation, gender identity or

expression, genetic information or marital status shall not exempt such practice from being considered a discriminatory act under this Ordinance.

EDUCATIONAL INSTITUTION — those postsecondary programs defined as educational institutions pursuant to the Pennsylvania Fair Educational Opportunities Act, 24 P.S. § 5001 et seq.

EMPLOYEE — does not include any individuals who, as a part of their employment, reside in the personal residence of the employer.

EMPLOYER — any person who employs one or more employees, including the Borough, its departments, boards and commissions, and any other government agency within its jurisdiction.

GENDER IDENTITY OR EXPRESSION — self-perception, or perception by others, as male or female, and shall include an individual's appearance, behavior, or physical characteristics, that may be in accord with, or opposed to, one's physical anatomy, chromosomal sex, or sex assigned at birth, and shall include, but is not limited to, persons who are undergoing or have completed sex reassignment, are transgendered or gender variant.

GENETIC INFORMATION — that information which is defined as genetic information in the Genetic Information Nondiscrimination Act of 2008, 42 U.S.C. § 2000ff.

HOUSING — includes (1) any building, structure, mobile home site or facility, or portion thereof, which is used or occupied or is intended, arranged or designed to be used or occupied as the home residence or sleeping place of one or more individuals, groups or families whether or not living independently of each other; and (2) any vacant land offered for sale, lease or held for the purpose of constructing or locating thereon any such building, structure, mobile home site or facility. The term "housing" shall not include any owner-occupied one or two family residence offered for rent by the owner thereof or by his or her broker, salesperson, agent or employee.

ORDINANCE — this ordinance, which shall also be known as the “Anti-Discrimination Ordinance.”

PERSON — any natural person, fraternal, civic or other membership organization, corporation, general or limited partnership, proprietorship, limited liability company, or similar business organization, including the Borough, its departments, boards and commissions, and other for-profit and nonprofit organizations.

PUBLIC ACCOMMODATION — Any accommodation, resort or amusement which is open to, accepts or solicits the patronage of the general public or offers goods or services, including loans, to the general public or is listed in Section 4(1)

of the Pennsylvania Human Relations Act, 43 P.S. § 954(l), but shall not include any accommodations which are in their nature distinctly private.

SEXUAL ORIENTATION — Actual or perceived homosexuality, heterosexuality and/or bisexuality.

2. To the extent words and phrases appearing in this Ordinance are not expressly defined herein, the meaning of this Ordinance shall be construed consistently with the Pennsylvania Human Relations Act.

§ 97.3. Unlawful Practices.

1. Discrimination in housing, employment, public accommodations or access to educational institutions is prohibited under this Ordinance.

2. Retaliation against any individual because such individual has opposed any practice forbidden by this Ordinance, or because such individual has made a charge, testified or assisted in any manner in any investigation, proceeding or hearing under this Ordinance, is prohibited under this Ordinance.

3. Aiding, abetting, inciting, compelling or coercing the doing of any act declared by this Ordinance to be an unlawful practice, or obstructing or preventing any person from complying with the provisions of this Ordinance, is prohibited under this Ordinance.

§ 97.4. Exceptions.

1. Notwithstanding any other provision of this Ordinance, it shall not be an unlawful employment practice for a religious corporation or association, not supported in whole or in part by governmental appropriations, to refuse to hire or employ an individual on the basis of religion.

2. Nothing in this chapter shall be interpreted to prohibit a religious organization, religious denomination, or association of religious organizations or denominations that is exempt from Federal taxation under Section 501(c)(3) of the Internal Revenue Code, or any organization affiliated with that religious organization, religious denomination, or association of religious organizations or denominations, from engaging in any conduct or activity that is required by, or that implements or expresses its religious beliefs or tenets of faith. Nor shall anything in this chapter be interpreted to require any such religious organization, religious denomination, or association of religious organizations or denominations, or any organization affiliated with that religious organization, religious denomination, or association of religious organizations or denominations to engage in any conduct or activity that is prohibited by its religious beliefs or tenets of faith.

§ 97.5. Establishment of Human Relations Commission.

1. Pursuant to 43 P.S. § 962.1 of the Pennsylvania Human Relations Act, there is hereby established a Human Relations Commission in and for Newtown Borough (hereinafter referred to as the “Newtown Human Relations Commission” or the “Commission”).

2. The Newtown Human Relations Commission shall consist of no fewer than three and no more than five members, who shall serve overlapping terms of three years each. There shall be an odd number of members, though the Commission may continue to operate with an even number of members pending appointment of new members, if necessary. All members of the Commission shall be appointed by the Borough Council. The Commission may elect up to three nonvoting, ex officio members to broaden the diversity that serves on the Commission. Members shall be residents of the Borough or individuals who work full-time within Newtown Borough. No voting member of the Newtown Human Relations Commission shall hold any office in any political party. Members of the Newtown Human Relations Commission shall serve without salary but may be paid expenses incurred in the performance of their duties, as approved by Borough Council. Paid staff may be hired, as approved by Borough Council, to assist in the performance of the duties of the Commission.

3. One of the Commission’s members shall be appointed as the Chairperson of the Commission by the members of the Commission. The Chairperson will be responsible for setting Commission meetings, coordinating with the Newtown Borough Secretary regarding received complaints and answers, and generally ensuring that the duties of the Commission are fulfilled. The Chairperson may delegate responsibility for Commission duties to specific Commissioners or to paid staff, if applicable.

4. Borough Council hereby grants to the Borough Human Relations Commission all of the powers necessary to the execution of its duties (as set forth below), provided that those powers shall not exceed those exercised by the Pennsylvania Human Relations Commission under the Pennsylvania Human Relations Act.

§ 97.6. Procedures; Expanded Procedures.

1. Filing a Complaint.

A. Any person(s) claiming to be aggrieved by an unlawful practice may make, sign and file a verified complaint alleging violations of this Ordinance, which shall include the following information:

(1) The name and address of the aggrieved person(s);

(2) The name and address of the person(s) alleged to have committed the prohibited practice;

(3) A concise statement of the facts, including pertinent dates, constituting the alleged discriminatory practice;

(4) If applicable, the address and a description of the dwelling unit which is involved; and

(5) Such other information as may be required by the Borough.

B. Complaints may be filed in person at Borough Hall or by mailing such complaints to Borough Hall or to the Chairperson of the Human Relations Commission. All complaints must be received by the Borough Secretary or by the Human Relations Commission within 180 days of the alleged act of discrimination to be considered timely.

C. The Borough Secretary shall convey all original complaints received by that office to the Chairperson of the Human Relations Commission within 10 days of the office's receipt of such complaints.

2. Notification and Answer.

A. Within 30 days of its receipt of a complaint, the Human Relations Commission shall:

(1) Send a copy of the complaint to the person(s) charged with a discriminatory practice (the "respondent(s)"); and

(2) Send a notice to the person(s) aggrieved, informing them that the complaint has been received. If the complaint alleges discrimination on a basis prescribed under federal or state law, the notice sent to the person(s) aggrieved shall also inform them of the right to file with the state Human Relations Commission and/or with the federal Equal Employment Opportunity Commission.

B. The respondent(s) shall file a written verified answer to the complaint within 60 days of receipt of the complaint. An answer to a complaint may be filed in the same manner as an original complaint. If the answer is filed at Borough Hall, it shall be conveyed by the Borough Secretary to the Chairperson of the Human Relations Commission within 10 days of the Borough's receipt thereof. The Commission shall promptly send a copy of the answer to the person(s) aggrieved.

3. Fact-Finding Conference.

A. After the answer has been received (or after 60 days following the filing of the Complaint if no answer is received) the Commission shall, within 60 days, invite the parties to voluntarily participate in a fact-finding conference concerning the dispute. The parties shall respond to the invitation to participate in a fact-finding conference within 30 days of being invited to participate.

B. If either of the parties agree to participate in a fact-finding conference, the parties shall meet with a Commission member at a location mutually agreeable to the parties within 30 days of the agreement to participate. Each party will be invited at the fact-finding conference to present evidence and documents relevant to the complaint. The

fact-finding conference will not be a public event, and no record of the conference will be created, excepting the findings of fact detailed in Subsection 3C.

C. The parties shall notify the Commission of whether the fact-finding conference resulted in a resolution of the complaint. In the event the complaint is resolved, the Commission shall notify the parties that the complaint has been dismissed. In the event the complaint is not resolved through the fact-finding conference, then the Commissioner, within 30 days, shall prepare findings of fact and a conclusion as to whether the Commissioner finds probable cause that an unlawful practice has occurred.

4. Disposition of the Complaint. Provided that the Commission has not elected under Subsection 5 of this section to use expanded procedures, and if the complaint is not resolved through the fact-finding conference, the Commission shall, at the second Commission meeting following the fact-finding conference, consider the findings prepared by the Commissioner who conducted the fact-finding conference. The Commission shall accept or reject the findings by public vote. The Commission shall provide the parties with the findings of fact and conclusions, shall notify the parties of the outcome of the vote, and this notice shall also indicate that the person aggrieved has a right to pursue the matter in court by filing a lawsuit.

5. Option of the Commission to Elect for Expanded Procedures. The Commission shall have the authority to elect to adopt expanded procedures as set forth in Subsections 6 through 12 of this section subject to approval by the Borough Council and appropriation of funding for such procedures. A majority of Commission members must vote in favor of adopting expanded procedures in order for such procedures to be adopted. In the event that such procedures are adopted, they must, while in effect, be applied to all complaints that are not resolved through a fact-finding conference. If the Commission has adopted expanded procedures, it may also, by majority vote and in its sole discretion, eliminate such procedures.

6. Expanded Procedures: Dismissal or Non-dismissal of the Complaint. If the fact-finding conference was successful in resolving the complaint, the Commission shall follow the procedures set forth in Subsection 3C of this section for dismissing the complaint. If the fact-finding conference was not successful in resolving the complaint, the Commission shall not dismiss the complaint but shall instead undertake the procedures set out in Subsections 7 through 12 of this section.

7. Expanded Procedures: Investigation. The Commission shall, in a timely fashion, investigate the allegations of discrimination set forth in the complaint. The Commission may, in the conduct of such investigation, issue subpoenas to any person charged with an unlawful practice to furnish information, records or other documents, or to give sworn testimony, as necessary to assist in its investigation.

8. Expanded Procedures: Finding of No Cause. If it shall be determined after the Commission's investigation that there is no basis for the allegations of the complaint, the Commission shall cause to be issued and served upon the parties written notice of such determination. This notice shall inform the person aggrieved that he/she has the right to pursue the matter in court by filing a lawsuit.

9. Expanded Procedures: Conciliation. If the Commission, after investigation, determines that probable cause exists for the allegations of the complaint, the Commission shall immediately endeavor to eliminate the unlawful practice complained of by persuasion, conference and conciliation.

10. Expanded Procedures: Public Hearing.

A. If the Commission, in its discretion, finds it is not possible to eliminate the unlawful practices by persuasion, conference or conciliation, the Commission shall cause to be issued and served a written notice, together with a copy of the complaint, which informs the respondent that the respondent must answer the charges of such complaint at a hearing before the Commission at a time and place to be specified in such notice.

B. The Commission may designate one or more of its members to preside at such a hearing or it may, at its election, conduct such hearing en banc.

C. At the public hearing, the case in support of the complaint shall be presented to the Commission by pro bono counsel, by Commission staff or by the Borough Solicitor's office. The case in support of the complaint may instead be presented by the complainant's attorney, if the complainant is represented. Both the complainant and the respondent may appear at the hearing with or without counsel and provide testimony. In addition, both the complainant and the respondent may introduce the testimony of additional witnesses and may submit documentary evidence. The Commission and the parties shall not be bound by the strict rules of evidence at the hearing.

11. Expanded Procedures: Findings. If upon all the evidence at the hearing the Commission shall find that a respondent has engaged in or is engaging in any unlawful discriminatory practice as defined in this Ordinance, the Commission shall state its findings of fact and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful discriminatory practice and to take such additional action as the Commission deems appropriate. The Commission shall have the authority to order any remedies available to the Pennsylvania Human Relations Commission under the Pennsylvania Human Relations Act.

12. Expanded Procedures: Finding of No Discrimination. If upon all the evidence the Commission shall find that a respondent has not engaged in any unlawful discriminatory practice, the Commission shall state its findings of fact and shall issue and cause to be served on the parties an order dismissing the complaint as to such respondent.

§ 97.7. Private Right of Action and Nonlimitation of Remedies.

1. Any person(s) aggrieved by a violation of this Ordinance shall have a right of action in the Bucks County Court of Common Pleas or any other court of competent jurisdiction and may recover for each violation the following remedies:

- A. Back pay, front pay and other actual damages, as those remedies are defined in the Pennsylvania Human Relations Act and case law interpreting the same;
- B. Emotional distress damages;
- C. Exemplary damages;
- D. Reasonable attorney's fees and court costs; and
- E. Such other relief, including injunctive relief, as the court may deem appropriate.

2. The right of action created by this Ordinance may be brought upon receipt by the aggrieved person(s) of notice that the Commission has dismissed the complaint or, if no such notice is received, after one year from the date of the filing of the complaint. If the person aggrieved has received notice that the Commission has dismissed the complaint, an action under this Ordinance must be brought by the aggrieved person within one year from the date of receipt of said notice or it will be barred. Equitable principles such as waiver, estoppel and equitable tolling shall apply to the time limitations for the filing of any complaint or other pleading under this Ordinance

3. Nothing in this Ordinance limits the right of an aggrieved person to recover under any other applicable law or legal theory.

SECTION 6. Whenever the requirements of this Ordinance are in conflict with other requirements of the Ordinances of the Borough of Newtown, the most restrictive, or those imposing the higher standards shall govern.

SECTION 7. The provisions of this Ordinance are severable. If any court of competent jurisdiction thereof shall hold any section, clause, sentence, part or provision illegal, invalid or unconstitutional, such decisions of the court shall not affect or impair any of the remaining sections, clauses, sentences, parts or provisions of this Ordinance. It is hereby declared to be the intent of the Council of the Borough of Newtown that this Ordinance would have been enacted if such illegal, invalid or unconstitutional section, clause, sentence, part or provision had not been included herein.

SECTION 8. This Ordinance shall become effective upon adoption by the Council of Newtown Borough.

NEWTOWN BOROUGH COUNCIL

By: _____
Julia Woldorf, President

Attest: _____
Marcia Scull, Secretary

Approved by Dennis O'Brien, Mayor

Dated: _____

Dennis O'Brien, Mayor