

ORDINANCE NO. 936

An ORDINANCE of the BOROUGH of KENNETT SQUARE, CHESTER COUNTY, COMMONWEALTH of PENNSYLVANIA, PROHIBITING DISCRIMINATION BASED on ENUMERATED CHARACTERISTICS and CREATING the BOROUGH of KENNETT SQUARE HUMAN RELATIONS COMMISSION

1. Purpose and declaration of policy.

- A. It is necessary that appropriate legislation be enacted to ensure that all individuals, regardless of actual or perceived race, color, sex, religion, ancestry, 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, are afforded equal opportunities for employment, housing, ownership or lease of commercial property, and the use of Public Accommodations.
- B. It is hereby declared to be the public policy of the Borough to foster the employment of all individuals in accordance with their fullest capacities, and to safeguard all individuals' rights to obtain and hold employment, regardless of actual or perceived race, color, sex, religion, ancestry, 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.
- C. It is hereby declared to be the public policy of the Borough to safeguard all individuals' rights to secure housing accommodation and secure commercial property regardless of actual or perceived race, color, sex, religion, ancestry, 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.
- D. It is hereby declared to be the public policy of the Borough to safeguard all individuals' access to all Public Accommodations, regardless of actual or perceived race, color, sex, religion, ancestry, 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.
- E. Nothing in this Ordinance shall be construed as supporting or advocating any particular doctrine, position, point of view, or religious view. To the contrary, it is the intention of this Ordinance that all individuals 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.
- F. This Ordinance shall be deemed an exercise of the police power of the Borough for the protection of the public welfare, prosperity, health and peace of the Kennett Square community.

2. Definitions

- A. The following words and phrases appearing with initial capital letters when used in this Ordinance shall have the meanings given to them in this subsection.

BOROUGH — The Borough of Kennett Square, County of Chester, Commonwealth of Pennsylvania.

BOROUGH COUNCIL — The Borough Council of the Borough of Kennett Square.

ORDINANCE — This Ordinance, which shall also be known as the "Antidiscrimination Ordinance."

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, 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 Section 5 of the Pennsylvania Human Relations Act, 43.P.S. § 955, as "unlawful discriminatory practices" and occurring within the municipal limits of the Borough of Kennett Square. 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, or marital status shall not exempt such practice from being considered a Discriminatory Act under this Ordinance.

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, individuals who are undergoing or have completed sex reassignment.

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.

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

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

- B. To the extent words and phrases appearing in this Ordinance are not expressly defined herein, the words and phrases shall be defined in accordance with the meaning given to such terms in the Pennsylvania Human Relations Act.

3. Unlawful practices.

- A. Discrimination in housing, employment or Public Accommodations is prohibited under this Ordinance.
- B. 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.
- C. 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.

4. Exception.

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 or religious doctrine.

5. Establishment of Human Relations Commission.

- A. Pursuant to Section 12.1 of the Pennsylvania Human Relations Act, 43.P.S § 962.1, there is hereby established the Human Relations Commission in and for the Borough of Kennett Square (hereinafter referred to as the "Borough of Kennett Square Human Relations Commission" or the "Commission").
- B. The Borough of Kennett Square Human Relations Commission shall consist of no fewer than three (3) and no more than five (5) members, who shall serve overlapping terms of three years each. Members of the Commission shall be appointed by Borough Council. Members shall include, but shall not be limited to, residents of the Borough. No more than one (1) member of Borough Council may serve on the Commission at any time. No member shall hold office in any political party. Members of the Borough of Kennett Square Human Relations Commission shall serve without salary but may be paid expenses incurred in the performance of their duties as approved by the Borough Manager.
- C. One of the Commission's members shall be appointed as the Chairperson of the Commission by the Mayor. The Chairperson will be responsible for setting Commission meetings, coordinating with the Kennett Square Borough Manager 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.

- D. The Borough Council hereby grants to the Borough of Kennett Square Human Relations Commission all of the powers necessary to execute 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.
- E. Members of the Commission shall, as soon after their appointment as practical, attend such training and education seminars or sessions as deemed necessary to acquaint themselves with the functioning of the Human Relations Commission under this Ordinance, as well as the terms, conditions, and provisions of the Pennsylvania Human Relations Act and the operation of the Pennsylvania Human Relations Commission. This training and education shall be as directed by the Chairperson and shall be performed in conjunction with the State Human Relations Commission.
- F. The Human Relations Commission shall have all of those powers necessary to execute the duties set forth under this Ordinance, provided that the powers shall not exceed those exercised by the Pennsylvania Human Relations Commission under the Pennsylvania Human Relations Act.
- G. In addition to the powers delineated in subsection F, above, the Human Relations Commission shall be charged with the duty to provide public education, promote diversity and inclusion within the Borough, to act as a liaison to community groups and civic organizations, and to serve generally as a community resource regarding diversity, antidiscrimination, and equality of opportunity in all aspects of the common welfare of the Borough.

6. Procedures.

A. Filing a complaint.

- (1) Any individual(s) who claims to have been aggrieved by an unlawful practice prohibited in Section 3 of this Ordinance (the "Complainant(s)") may make, sign and file a verified complaint alleging violations of this Ordinance, which shall include the following information:
 - (a) The name and address of the Complainant(s);
 - (b) The name and address of the Person(s) alleged to have committed the prohibited practice;
 - (c) A concise statement of the facts, including pertinent dates, constituting the alleged discriminatory practice;
 - (d) If applicable, the address and a description of the dwelling unit which is involved; and
 - (e) Such other information as may be required by the Borough or the Commission.
- (2) Complaints may be filed in person at the Borough Manager's office, or by mailing such complaints to the Borough Manager's office or to the Chairperson of the

Human Relations Commission. All complaints must be received by the Borough Manager's office or by Human Relations Commission within three hundred (300) days of the alleged act of discrimination to be considered timely.

- (3) The Borough Manager's Office shall convey all original complaints received by that Office to the Chairperson of the Human Relations Commission within ten (10) days of the office's receipt of such complaints.

B. Notification and answer.

- (1) Within thirty (30) days of its receipt of a complaint, the Human Relations Commission shall send a copy of the complaint to the Person(s) charged with a discriminatory practice (the "Respondent(s)") and send a notice of receipt to the Complainant(s). The notice sent to the Complainant(s) shall also inform them of the right to file with the Pennsylvania Human Relations Commission and, if the complaint is related to employment, with the federal Equal Employment Opportunity Commission.
- (2) The Respondent(s) shall file a written verified answer to the complaint within sixty (60) days of their receipt of the complaint. The Commission may consider failure to file a written verified answer in sixty (60) days to indicate that the Respondent(s) does not wish to contest the allegations, and shall proceed with mediation or dismiss the complaint. If the answer is filed with the Borough Manager's office, it shall be conveyed by the Borough Manager to the Chairperson of the Human Relations Commission within ten (10) days of the Borough Manager's office's receipt thereof. The Commission shall promptly send a copy of the answer to the Complainant(s).

C. Mediation.

- (1) After the answer has been received, the Commission shall, within sixty (60) days, invite the parties to voluntarily participate in the mediation of their dispute. The parties shall respond to the invitation to mediate within thirty (30) days of being invited to mediate their dispute.
- (2) If mediation is elected by the parties, the parties may jointly select a qualified mediation service, in which case the parties shall share financial responsibility for all costs and expenses associated with mediation, by direct arrangement with the mediation service. If the complaint concerns employment or public accommodation, the parties may select the mediation service of the Pennsylvania Human Relations Commission. If the parties elect mediation, but do not jointly select a mediator, the Commission shall select a mediator, who may be a trained member of the Commission, a trained volunteer from the community, or a contracted mediation service with human relations expertise. The Commission shall use cost-free volunteer mediators only, unless funds are approved for contracted mediation services by the Borough Council, or are obtained from an outside funding source.

- (3) Should either party decline or fail to respond to such invitation to participate in mediation, or should either party fail to appear at any subsequently scheduled mediation session, the Commission shall dismiss the complaint.
 - (4) The parties shall notify the Commission of whether the mediation was successful in resolving the complaint. Mediation proceedings shall otherwise be confidential and shall not be made public unless agreed to in writing by both parties to the dispute.
- D. Dismissal of the complaint. The Commission shall, following the mediation, promptly notify the parties that it has dismissed the complaint. If the complaint was not resolved through mediation, this notice shall also advise that the Complainant(s) has(have) a right of action to pursue the matter in court.

7. Private right of action and non-limitation of remedies.

- A. To the extent provided by law, any person aggrieved by a violation of this Ordinance shall have a right of action in the Court of Common Pleas of Chester County or any other court of competent jurisdiction and may recover for each violation the following remedies:
- (1) Back pay, front pay, and other actual damages;
 - (2) Emotional distress damages;
 - (3) Exemplary damages;
 - (4) Reasonable attorney's fees and court costs; and
 - (5) Such other relief, including injunctive relief, as the court may deem appropriate.
- B. The right of action created by this Ordinance may be brought upon receipt by the Complainant(s) of notice that the Commission has dismissed the complaint, or, if no such notice is received, after one (1) year from the date of the filing of the complaint. If the Complainant(s) has (have) received notice that the Commission has dismissed the complaint, an action by the Complainant under this Ordinance shall be barred after one (1) year from the date of receipt of notice. 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.
- C. Nothing in this Ordinance shall limit the rights and remedies at law or equity.

8. Expanded procedures.

The Commission may recommend passage of a resolution by Borough Council adopting expanded procedures, as set forth in subsections A through G of this section. The recommendation must include a budget itemizing proposed income and expenses. The Commission may obtain funding for expanded procedures from federal or state government entities, private foundations, and any other funding sources. The Borough shall first obtain an opinion from the Borough solicitor identifying potential liability and legal issues relating to the establishment and utilization of expanded procedures before voting on the proposed resolution authorizing these procedures.

In the event that such procedures are adopted by resolution of Borough Council, they must, while in effect, be applied to all complaints that are not resolved through mediation. Borough Council may eliminate such procedures by resolution, upon recommendation by the Commission or at its sole discretion, and it shall be solely within the discretion of Borough Council to decide whether to adopt or eliminate expanded procedures. No individual shall have the right to make any claim, bring any action, or otherwise contest the Council's election to adopt, decline to adopt, or eliminate expanded procedures. This section does not create any private right or entitlement to have expanded procedures implemented, even if funding is available for such procedures.

- A. Expanded procedures: dismissal or non-dismissal of the complaint. If mediation was successful in resolving the complaint, the Commission shall follow the procedures set forth in Subsection D of this section for dismissing the complaint. If mediation was not successful in resolving the complaint, the Commission shall not dismiss the complaint, but shall instead undertake the procedures set forth in this Ordinance.
- B. 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 individual charged with an unlawful practice to furnish information, records or other documents, as necessary to assist in its investigation.
- C. 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 Complainant(s) that they have the right to pursue the matter in court by filing a lawsuit.
- D. 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.
- E. Expanded procedures: public hearing.
 - (1) If the Commission, in its sole judgment, finds it is not possible to eliminate the unlawful practices by persuasion, the Commission shall by majority vote order the Respondent(s) and Complainant(s) to appear at a hearing before the Commission. The Commission shall cause to be issued and served a written notice of this order, and of the time and place specified for such hearing, to the Respondent(s) and Complainant(s), together with a copy of the complaint.
 - (2) Failure of either party to appear at a hearing as ordered by the Commission shall result in a fine of not more than \$250, and the Commission shall have the authority to issue summary findings as set forth in subsection K and L of this section.
 - (3) The Commission may designate one or more of its members to preside at such hearing, or it may at its election conduct such hearing en banc.

(4) At the public hearing, the case in support of the complaint shall be presented to the Commission by any individual appointed from time to time as Complainant Advocate by the Commission. 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.

- F. Expanded procedures: findings. If upon consideration of all of the evidence at the hearing, the Commission finds that a Respondent has engaged in or is engaging in any unlawful Discriminatory Act 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.
- G. Expanded procedures: finding of no discrimination. If, upon consideration of all of the evidence, the Commission finds that a Respondent has not engaged in any unlawful Discriminatory Act as defined in this Ordinance, the Commission shall state its findings of fact, and shall issue and cause to be served on the parties an order dismissing the complaint.

ENACTED and APPROVED this 6th day of March, 2017.

BY: 

Danilo P. Maffei
Borough Council President

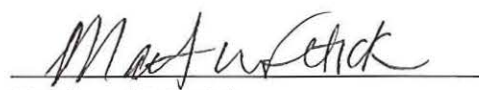
ATTEST:



Karen L. Scherer
Borough Secretary

[BOROUGH SEAL]

APPROVED this 6th day of March, 2017.



Matthew W. Fetick
Mayor