

NEWTOWN TOWNSHIP,
BUCKS COUNTY, PENNSYLVANIA

ORDINANCE NO. 2018-0-8

AN ORDINANCE OF THE TOWNSHIP OF NEWTOWN, COUNTY OF BUCKS, COMMONWEALTH OF PENNSYLVANIA ESTABLISHING THE NEWTOWN TOWNSHIP HUMAN RELATIONS COMMISSION AND PROHIBITING DISCRIMINATION IN EMPLOYMENT, HOUSING AND THE USE OF PUBLIC ACCOMMODATIONS BASED ON RACE, COLOR, GENDER, RELIGION, ANCESTRY, GENETIC INFORMATION, NATIONAL ORIGIN, SEXUAL ORIENTATION, GENDER IDENTITY, GENDER EXPRESSION, FAMILIAL STATUS, MARITAL STATUS, AGE, MENTAL OR PHYSICAL DISABILITY, USE OF GUIDE OR SUPPORT ANIMALS AND/OR MECHANICAL AIDS; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the Board of Supervisors of Newtown Township, Bucks County, Pennsylvania is empowered to establish ordinances providing for the health, safety, and general welfare of Township residents and visitors; and

WHEREAS, the Chapter 1, Administration and Government of the Newtown Township Code of Ordinances contains, *inter alia*, provisions establishing certain boards and commissions pursuant to the authority of the Pennsylvania Second-Class Township Code, as amended; and

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

NOW THEREFORE, be it, and it is hereby **ORDAINED** by the Board of Supervisors of Newtown Township, Bucks County, Pennsylvania, and it is hereby **ENACTED** and **ORDAINED** by authority of same as follows:

I. Chapter 1, "Administration and Government" of the Newtown Township Code of Ordinances is hereby amended by adding a new Part 16 as follows:

Part 16: ANTI-DISCRIMINATION/HUMAN RELATIONS COMMISSION.

This Part shall be known and may be cited as the “Newtown Township Anti-Discrimination Ordinance”.

§1-1601. Purpose and Declaration of Policy.

1. In order to ensure that all persons, regardless of actual or perceived race, color, gender, religion, ancestry, genetic information, national origin, sexual orientation, gender identity, gender 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 Township to foster the employment of all individuals in accordance with their fullest capacities regardless of actual or perceived race, color, gender, religion, ancestry, genetic information, national origin, sexual orientation, gender identity, gender 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, gender, religion, ancestry, genetic information, national origin, sexual orientation, gender identity, gender 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, gender, religion, ancestry, genetic information, national origin, sexual orientation, gender identity, gender expression, familial status, marital status, age, mental or physical disability, use of guide or support animals and/or mechanical aids.

3. Nothing in this Part 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 Part that all persons be treated fairly and equally, and it is the express intent of this Part to guarantee fair and equal treatment under the law to all people of the Township.

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

§1-1602. Definitions.

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

BOARD OF SUPERVISORS – the Board of Supervisors of Newtown Township, Bucks County, Pennsylvania.

CONVERSION THERAPY - any practices or treatments that seek to change an individual's sexual orientation and/or gender identity or expression, including but not limited to efforts to change behaviors or gender expressions, or to reduce or eliminate sexual or romantic attractions or feelings toward individuals of the same gender.

Conversion Therapy shall not include counseling that:

- a) Provides assistance to a person undergoing gender transition; and/or
- b) Provides acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development, including sexual orientation-neutral and gender identity or expression-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such counseling does not seek to change an individual's sexual orientation and/or gender identity or expression.

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

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 Township, its departments, boards, and commissions, and any other government agency within its jurisdiction.

GENDER IDENTITY OR GENDER EXPRESSION — self-perception, or perception by others, as male, female, nonbinary or another gender, 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 not be limited to, persons who are undergoing or have completed sex reassignment, are transgender, intersex, genderqueer, gender fluid, or gender nonconforming.

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 personal residence offered for rent by the owner or lessee thereof or by his or her broker, salesperson, agent or employee.

LIFESTYLE - nothing in this Part 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 Part that all persons be treated fairly and equally, and it is the express intent of this Part to guarantee fair and equal treatment under the law to all people of the Township.

MENTAL HEALTH PROFESSIONAL - a person who is licensed to provide professional mental health care or counseling under Pennsylvania law, or a person who performs mental health care or counseling as part of the person's professional training for any of such licensed profession.

ORDINANCE — this Part, which shall also be known as the "Newtown Township 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 Township, 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(1), but shall not include any accommodations which are in their nature distinctly private.

SEXUAL ORIENTATION — actual or perceived sexual and/or romantic attraction and/or feelings toward other individuals. The term includes, but is not limited to, individuals who are heterosexual, homosexual, gay, lesbian, bisexual, queer, asexual, aromantic and/or questioning.

TOWNSHIP – Newtown Township, Bucks County, Pennsylvania.

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

§1-1603. Unlawful Practices.

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

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

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

4. It is a prohibited form of discrimination under this ordinance for a Mental Health Professional to engage in Conversion Therapy with a person under 18 years of age.

§1-1604. Exceptions.

1. Notwithstanding any other provision of this Part, 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 Part 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 Part 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.

§1-1605. 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 Township (hereinafter referred to as the "Newtown Township Human Relations Commission" or the "Commission").

2. The Newtown Township 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 Board of Supervisors. The Commission may elect up to three non-voting, *ex officio* members to broaden the diversity that serves on the Commission. Members shall be residents of the Township or individuals who work full-time within Newtown Township. No voting member of the Newtown Township Human Relations Commission shall hold any office in any political party. Members of the Newtown Township Human Relations Commission shall serve without salary but may be paid expenses incurred in the performance of their duties, as approved by the Board of Supervisors. Paid staff may be hired, as approved by the Board of Supervisors, 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 Township 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.

4. The Board of Supervisors hereby grants to the Newtown Township Human Relations Commission all of the powers necessary for 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.

5. 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 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. Such training and education shall be as directed by the Chairperson and shall be performed in conjunction with the state Human Relations Commission.

§1-1606. 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 Part, 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 Township.

B. Complaints may be filed in person at the Newtown Township Building or by mailing such complaints to the Newtown Township Building or to the Chairperson of the Commission. All complaints must be received by the Township manager or by the Commission within 180 days of the alleged act of discrimination to be considered timely.

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

2. Notification and Answer.

A. Within 30 days of its receipt of a complaint, the 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 proscribed under federal or state law, the notice sent to the person(s) aggrieved shall also inform them of the right to file with the Pennsylvania 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 the Newtown Township Building, it shall be conveyed by the Township Manager to the Chairperson of the Commission within 10 days of the Township'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 one (1) Commission member (who shall be designated by the Chairman of the Commission) 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 3.C., below.

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 Commission member with whom the parties met shall, within 30 days after the meeting, prepare findings of fact and a conclusion as to whether the Commission member finds, by a preponderance of the evidence, 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 next Commission meeting following the fact-finding conference, consider the findings prepared by the Commission member 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 the 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 adopt expanded procedures as set forth in Subsections 6 through 12 of this Section subject to approval by the Board of Supervisors 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 3.C 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/they has the right to pursue the matter in court by filing a lawsuit.

9. Expanded Procedures: Conciliation.

If the Commission, after investigation, determines that the allegations of the complaint are supported by a preponderance of the evidence, 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 public 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. Both the complainant and the respondent may appear at the hearing with or without counsel and provide testimony. At the public hearing, the case in support of the complaint may be presented to the Commission by *pro bono* counsel, by Commission staff, or by the complainant's attorney, if the complainant is represented. 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: Finding of Unlawful Discriminatory Practice.

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 Part, 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 at the hearing 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. This order shall inform the person aggrieved that he/she/they has the right to pursue the matter in court by filing a lawsuit.

§1-1607. Private Right of Action and Non-limitation of Remedies.

1. Any person(s) aggrieved by a violation of this Part 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 Section 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 Section 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 Section.

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

SECTION II. Partial Repealer

All other provisions of the Township's Code of Ordinances, as amended, shall remain in full force and effect. All other ordinances or provisions of an ordinance inconsistent herewith or in conflict with any of the terms hereof are, to the extent of said inconsistencies or conflicts, hereby specifically repealed.

SECTION III. Severability

The provisions of this Ordinance are severable. If any section, clause, sentence, part or provision thereof shall be held illegal, invalid, or unconstitutional by a court of competent jurisdiction, such decision 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 Board of Supervisors that this Ordinance would have been adopted if such illegal, invalid, or unconstitutional section, clause, sentence or part of a provision had not been included herein.

SECTION IV. Effective Date

This Ordinance shall become effective immediately upon the appointment of a Human Relations Commission pursuant to this Ordinance.

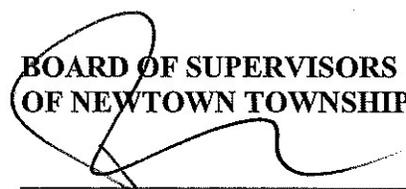
ENACTED and ORDAINED this 28th day of November, 2018.

ATTEST:



Micah Lewis, Township Manager

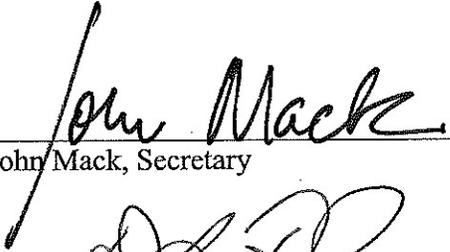
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OF NEWTOWN TOWNSHIP**



Phillip Calabro, Chairman



Linda Bobrin, Vice-Chair



John Mack, Secretary



Dennis Fisher, Member

Kyle Davis, Member