

ORDINANCE # 18 - 14

AN ORDINANCE OF THE CITY OF BEREHA, KENTUCKY, PROVIDING THAT THE CODE OF ORDINANCES, CITY OF BEREHA, KENTUCKY, BE AMENDED BY REVISING CHAPTER 22, ARTICLE VIII, HUMAN RIGHTS COMMISSION, SECTIONS 22.700-22.708, AND ADDING SECTIONS 22.709-22.713, WHICH REVISIONS AND ADDITIONS PROHIBIT DISCRIMINATION BASED ON SEXUAL ORIENTATION OR GENDER IDENTITY, PROVIDE FOR EXCEPTIONS AND EXCLUSIONS TO SUCH PROHIBITION, INCLUDING AN EXCEPTION FOR BURDENING FREEDOM OF RELIGION, AND PROVIDE FOR AN ENFORCEMENT PROCEDURE FOR COMPLAINTS OF UNLAWFUL DISCRIMINATION.

BE IT ORDAINED, by the City Council of the City of Berea, Kentucky, as follows:

SECTION I

That the Code of Ordinances of the City of Berea, Kentucky, be amended by revising Chapter 22, Article VIII, Human Rights Commission, Sections 22.700-22.708, and adding Sections 22.709-22.713, so that Article VIII and such Sections shall read as follows:

' 22.700 PURPOSE

It is the public policy of the City of Berea to promote fair treatment and equal opportunity for all people regardless of race, color, religion, national origin, sex, age (over 40), gender identity, sexual orientation, familial status or physical disability of any type.

' 22.701 DEFINITIONS

For the purpose of this Article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

The definitions contained in KRS Chapter 344, including but not limited to KRS 344.010, 344.030, 344.130, and 344.370(4) as such statutes may hereafter be amended, are incorporated by reference herein.

“AGENCY” Any public regulatory body but not an employer.

“COMMISSION” The City of Berea Human Rights Commission also referred to as BHRC.

“COLOR” The hue or pigmentation of the human skin that distinguishes individuals as being members of a particular race or races.

“COMMISSIONER” A member of the Berea Human Rights Commission.

“DISCRIMINATION” Any direct or indirect act or practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial or any other act or practice or differentiation or preference in the treatment of a person because of race, color, religion, national origin, sex, age (over 40), gender identity, sexual orientation, familial status or physical disability of any type.

“GENDER IDENTITY” The actual or perceived appearance, expression, or identity of a person with respect to masculinity or femininity.

“BHRC HEARING OFFICER” An attorney, licensed to practice law in the Commonwealth of Kentucky, with no less qualifications than a District Judge, who has been appointed by the Berea Human Rights commission to conduct administrative hearings.

“BHRC INVESTIGATOR” An individual who has been so designated by the Berea Human Rights Commission to investigate complaints filed with the Berea Human Rights Commission. The Commission may enter into a contract, inter-local agreement, or cooperative working agreement with another government or Human Rights Commission to investigate complaints involving sexual orientation or gender identity as may be required by the Berea Human Rights Commission.

“NATIONAL ORIGIN” The country or region where a person was born, or from which a family originates.

“RACE” A subdivision of humankind having a relatively constant set of physical traits, such as color of skin and eyes, stature, texture of hair, and so forth.

“SEXUAL ORIENTATION” An individual’s actual or imputed heterosexuality, homosexuality, bisexuality, or asexuality.

' 22.702 CREATION OF COMMISSION

There is hereby created a Berea Human Rights Commission. It shall consist of seven members who shall be appointed by the Mayor on a non-partisan basis and shall be broadly representative of employers, proprietors, trade unions, human rights groups, and the general public. Of the first members appointed, three shall be appointed for one year; two shall be appointed for two years; and two for three years; after the first appointments, all appointments shall be for a term of three years. A member chosen to fill a vacancy otherwise than by expiration of a term shall be appointed for the unexpired term of the member whom he/she is to succeed. A member of the Commission is eligible for reappointment. Before making new appointments, the Mayor shall request the recommendations of the Commission and the City Council. No elected or appointed city official shall be a member of the Commission. The members shall serve without compensation.

' 22.703 FUNCTIONS.

(A) The Commission shall encourage fair treatment and equal opportunity for all people regardless of race, color, religion, national origin, sex, age (over 40), gender identity, sexual orientation, familial status or physical disability of any type and shall promote mutual

understanding and respect among all economic, social, racial, religious, sex, age, and ethnic groups; and shall endeavor to eliminate discrimination against, and antagonism between, religious, racial, sex, age (over 40), gender identity, sexual orientation, familial status or physical disability of any type, and ethnic groups and their members.

(B) The Commission shall administer such enforceable ordinances and resolutions forbidding discrimination as the City Council may enact and specifically authorize the Commission to enforce.

' 22.704 POWERS AND DUTIES

In performing its functions, the Commission shall have the following powers and duties.

(A) To conduct or arrange for research projects and studies into, and publish reports on, discrimination and the status of equal opportunity in the community;

(B) To accept gifts or bequests, grants or other payments, public or private, to help finance its activities;

(C) To receive, initiate, investigate, seek to conciliate, and hold hearings on complaints alleging discrimination;

(D) To recommend methods for elimination of discrimination and inter-group tensions, and to use its best efforts to secure compliance with the recommendations;

(E) To cooperate with other agencies, both public and private, on the local, state and national level in performing its functions under this Article;

(F) To cooperate with the various departments, agencies, and boards of the city in effectuating the purposes of this Article;

(G) To enlist the support of civic, labor, religious, professional, and educational organizations and institutions in the community to promote activities and programs that will further the goals of this Article;

(H) To organize community committees and councils that will work toward the goals of this Article;

(I) To recommend legislation to the City Council and modes of executive action to the Mayor that will effectuate the purpose of this Article; and

(J) To submit an annual report of its activities of the progress and problems in inter-group relations in the community to the Mayor and City Council.

' 22.705 COOPERATION OF CITY DEPARTMENTS

The services of all other city departments, agencies, and boards shall be made available to the Commission upon its request. Information in the possession of any city department, agency or board shall be furnished to the Commission upon its request and to the extent permitted by law.

' 22.706 ELECTION OF OFFICERS

The Commission shall elect a chair and vice-chair, secretary, treasurer, and such other officers as it deems necessary. The chair of the Commission shall appoint such committees as the Commission may deem necessary in order to carry out its functions.

' 22.707 BUDGET

The Commission shall submit a proposed budget for receipts and expenditures to the Mayor and City Council, who shall review and revise the proposed budget with the same process as other city departments. The treasurer of the Commission shall make a semi-annual financial report to the Mayor and City Council.

' 22.708 RELATIONSHIP WITH KENTUCKY COMMISSION ON HUMAN RIGHTS

The Berea Human Rights Commission shall, when requested, act in an advisory capacity to and otherwise cooperate with the Kentucky Commission on Human Rights wherever possible to effectuate compliance with state laws. The Berea Human Rights Commission is authorized to enter into cooperative working agreements with the Kentucky Commission on Human Rights whenever enforceable ordinances forbidding discrimination are enacted which conform with state law.

' 22.709 UNLAWFUL PRACTICES

It is hereby unlawful for any person to discriminate in any way prohibited in KRS 344.040, 344.045, 344.050, 344.060, 344.070, 344.080, 344.090 (employment), KRS 344.120 (Public Accommodations) 344.140, 344.145, 344.280, 344.290, 344.360 (Housing Practices), 344.367, KRS 344.370 (Financial Practices), KRS 344.380 (Block Busting), or KRS 344.400, based upon race, color, religion, national origin, sex, age (over 40), gender identity, sexual orientation, familial status or physical disability of any type.

A. As to claims for discrimination under this Article based upon race, color, religion, national origin, sex, age (over 40), familial status, or disability, the exemptions provided in KRS 344.040(2), 344.090, 344.100, 344.130, 344.145(2), 344.360(14), 344.362, and 344.365, as amended, shall apply.

B. The prohibition of discrimination in this Article based upon gender identity and sexual orientation shall not apply:

(1) To the rental of a housing accommodation in a building which contains housing accommodations for not more than two families living independently of each other, if the owner or a member of the family of the owner resides in one of the housing accommodations;

(2) To the rental of a portion of a housing accommodation by the occupant of the housing accommodation, or by the owner of the housing accommodation if the owner or a member of the family of the owner resides therein;

(3) To a religious institution, or to an organization operated for charitable or educational purposes, which is operated, or supervised, or controlled by a religious corporation, association, society, to the extent that the religious corporation, association, or society limits, or gives preferences in sale, lease, rental, assignment, or sublease of real property to individuals of the same religion, or makes selection of buyers, tenants, lessees, assignees, or sub lessees that is calculated by such religious corporation, association, or society to promote the religious principles for which it is established or maintained;

(4) To the private sale by a private individual homeowner who disposes of a property without the aid of any real estate operator, broker, or salesman, and without advertising or public display;

(5) To a real estate operator to require the operator to negotiate with any individual who has not shown evidence of financial ability to consummate the purchase or rental of a housing accommodation.

(6) To any single-family house sold or rented by an owner; provided that the private individual owner does not own more than three single-family houses at any one time. In the case of sale of any single-family house by a private individual owner not residing in the house at the time of the sale or who was not the most recent resident of the house prior to the sale, the exemption granted by this section shall apply only with respect to one sale within any 24-month period. The sale or rental of any single-family house shall be accepted from the application of this chapter only if the house is sold or rented:

(a) Without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent or salesperson, or of the facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any broker, agent, salesperson or person; and

(b) Without the publication, posting or mailing, after notice of any advertisement or written notice of any advertisement, but nothing in this provision shall prohibit the use of attorneys, escrow agents, abstractors, title companies and other professional assistance as necessary to perfect or transfer the title.

(7) To restrooms, shower rooms, bath houses and similar facilities which are in their nature distinctly private;

(8) To YMCA, YWCA and similar type dormitory lodging facilities;

(9) To hospitals, nursing homes, penal or similar facilities, with respect to any requirement that men and women not be in the same room.

(10) Nothing herein shall be construed to prevent an employer from:

(a) Enforcing a written employee dress policy; or

(b) Designating appropriate restroom and shower facilities.

(11) Employment Exceptions. Notwithstanding any other provisions of this Article, it shall not be an unlawful practice for:

(a) An employer to hire and employ employees; or an employment agency to classify or refer for employment an individual; or for a labor organization to classify its membership or to classify or refer for employment an individual; or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ an individual in any such program, on the basis of religion or national origin in those certain instances where religion or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise;

(b) A religious organization, corporation, association, or society to employ an individual on the basis of religion to perform work connected with the carrying on by such corporation, association, or society of its religious activity;

(c) A school, college, university, or other educational institution to hire and employ individuals of a particular religion, if the school, college, university, or other education institution is in whole or substantial part owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society or if the curriculum of the school, college, university, or other educational institution is directed toward the propagation of a particular religion, and the choice of employees is determined by such organization to promote the religious principles for which it is established or maintained;

(d) An employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, if the difference is not the result of an intention to discriminate because of race, color, religion, national origin, sex, age (over 40), gender identity, sexual orientation, familial status or physical disability of any type, nor is it an unlawful practice of an employer to give and to act upon the results of any professionally developed competency or ability test provided that the test, its administration or action based upon the test results is not designed, intended or used to discriminate because of race, color, religion, national origin, sex, age (over 40), gender identity, sexual orientation, familial status or physical disability of any type.

'22.710 GENERAL EXCEPTIONS

The provisions of this Article regarding sexual orientation or gender identity shall not apply to a religious institution, association, society or entity or to an organization operated for charitable or educational purposes, which is owned, operated or controlled by a religious institution, association, society or entity, except that when such an institution or organization receives a majority of its annual funding from any federal, state, local or other governmental body or agency, or any combination thereof, it shall not be entitled to this exemption.

The City is prohibited from substantially burdening a person's freedom of religion by the provisions of KRS 446.350. Accordingly, where a person, by action or inaction, violates the provisions of this ordinance due to a sincerely held religious belief, the individual or entity alleging the violation must prove by clear and convincing evidence that the City has a compelling governmental interest in infringing the specific act or refusal to act and has used the least restrictive means to further that interest to establish the existence of the violation. A burden shall include withholding benefits, assessing penalties, exclusion from programs or access to facilities.

'22.711 ENFORCEMENT PROCEDURE

(A) Relationship with the Kentucky Commissions on Human Rights

In order to effectuate and enforce the provisions of this Article, the BHRC shall enter into a cooperative working agreement with the Kentucky Commission on Human Rights whereby all claims filed with the Berea Human Rights Commission alleging discrimination in employment, public accommodations, housing, financial and credit transactions, based on race, color, religion, national origin, sex, age (over 40), familial status or physical disability of any type shall be referred to the Kentucky Commission on Human Rights for investigation and enforcement in accordance with the Kentucky Civil Rights Act, KRS Chapter 344 *et seq.* The BHRC shall reserve to itself the resolution of all claims of discrimination based on sexual orientation or gender identity.

(B) Filing and Processing Complaints:

(1) Any person claiming to be aggrieved by a violation of this ordinance may, within 180 days of the alleged violation or one year if the alleged violation pertains to housing file a written complaint under oath with the Berea Human Rights Commission containing the following information:

(a) The name and address (if known) of the alleged violator ("Respondent") or facts sufficient to identify such person.

(b) An outline of the material facts upon which the complaint is based.

(c) The alleged violation.

(d) That any conduct of the Complainant was for the purpose of obtaining housing, employment or public accommodation in question and not for the purpose of harassment or entrapment of the person against whom the complaint is made.

(e) That a complaint concerning this same matter has not been filed with another agency or that any complaint concerning this matter filed with another agency has been dismissed by such agency without a final judgment on the merits.

(2) Upon receipt of the complaint, the Berea Human Rights Commission shall first make the following determination, and take the following action:

(a) If the complaint alleges discrimination based on race, color, national origin, religion, sex, age (over 40), familial status or disability, the complainant shall immediately be referred to the Kentucky Commission on Human Rights for further processing, investigation and/or administrative proceedings in accordance with the Kentucky Civil Rights Act, KRS Chapter 344, et seq.

(b) If the complaint alleges discrimination based on sexual orientation or gender identity, a copy of the complaint shall be served on the Respondent by certified mail. The Respondent shall file a written response to the complaint within twenty (20) days from the receipt thereof.

(C) Investigation – Findings and Conciliation

(1) The Berea Human Rights Commission shall provide for an HRC Investigator who shall investigate the circumstances surrounding all complaints filed with the Berea Human Rights Commission in the areas of sexual orientation or gender identity. The HRC Investigator shall report the results of all investigations promptly to the Berea Human Rights Commission.

(2) If, after receipt of the report of the HRC Investigator, the Berea Human Rights Commission determines that there is no probable cause to believe that a violation has occurred, the Berea Human Rights Commission shall dismiss the complaint. Written notices of the dismissal shall be served upon the Complainant and Respondent by U.S. Mail postage prepaid. The notice shall state that the Complainant or his or her designee may file a written request for reconsideration within ten (10) days in accordance with the provisions set out in KRS 344.200.

(3) If, after receipt of the report of the HRC Investigator, the Berea Human Rights Commission determines that there is probable cause to support the allegations contained in the complaint, the Berea Human Rights Commission shall endeavor to eliminate the alleged violation by a conciliation agreement, signed by all parties and the Chair of the Commission, wherein the alleged violation is eliminated and the Complainant is made whole to the greatest extent practicable. The conciliation agreement shall include provisions to enforce its terms. It shall be an unlawful practice for a party to a conciliation agreement to violate its terms (KRS 344.290).

(4) “Probable cause” is defined as a reasonable amount of suspicion, supported by circumstances sufficiently strong to justify a prudent and cautious person’s belief that certain facts are probably true.

(5) Any member of the Berea Human Rights Commission who is substantially involved in the investigation as to the existence of probable cause shall recuse himself/herself from the determination of the existence of probable cause. The definition of “substantially involved” shall be made by the Chair of the Berea Human Rights Commission.

(6) If a settlement is achieved, the Berea Human Rights Commission shall furnish a copy of a signed conciliation agreement to the Corporation Counsel for review and approval as to matters of law. Any law or aspect of the agreement that is deemed to be contrary to or in violation of federal, state or local ordinances shall be removed from the agreement and the parties and the Berea Human Rights Commission shall reconvene for additional discussion in an effort to reach a legal agreement. The terms of the conciliation agreement may be made public, but no other information relating to any complaint, its investigation or its disposition may be disclosed without consent of the Complainant and the person charged. A conciliation agreement need not contain a declaration or finding that a violation has in fact occurred and it may provide for dismissal of the complaint without prejudice

(7) If conciliation is not achieved by agreement between the parties, the Berea Human Rights Commission shall appoint an HRC Hearing Officer who shall proceed with a hearing in accordance with Section (D) below, the Kentucky Civil Rights Act, and KRS 13B.

(D) Hearing Procedures, Judicial Review and Appeals

(1) The Berea Human Rights Commission shall set a date, time and location for a hearing and notify the Complainant and Respondent in writing at least twenty (20) days in advance of that hearing date.

(2) A hearing officer shall be appointed by the Berea Human Rights Commission to conduct an administrative hearing and to regulate the course of the proceedings in a manner that will promote the orderly and prompt conduct of the hearing.

(3) All pre-hearing proceedings, hearings, judicial review and appeals shall be conducted in accordance with all applicable provisions of the Kentucky Civil Rights Act, including KRS 344.240 and KRS 13B, the provisions of all of which are hereby adopted in full and incorporated herein by reference.

(4) If the Hearing Officer finds that a violation has occurred, he/she may recommend the following penalties:

(a) For the first or second offense, a civil penalty of not less than \$100.00, but not greater than \$250.00.

(b) For the third or subsequent offense, a civil penalty of not less than \$250.00, but not greater than \$500.00. The hearing officer shall submit the final adjudication and recommended order to the Berea Human Rights Commission for approval.

(5) Upon approval by the Berea Human Rights Commission, the HRC Officer shall mail a copy of the Order to the Complainant and Respondent, postage pre-paid. The Respondent shall have thirty days to pay any penalty issued in the Order. If the Respondent does not pay the penalty within the time given, the Berea Human Rights Commission shall inform the City Administrator who shall take all action deemed appropriate to collect any and all penalties, to include an action in the appropriate court to enforce the penalties. Respondent may appeal an order of the Berea Human Rights Commission to the Madison Circuit Court within thirty (30) days after the final order of the Berea Human Rights Commission has been mailed as provided herein. The procedure for an appeal shall be the same as set forth in KRS 13B.140.

(6) The Berea Human Rights Commission shall report at least quarterly report to the City Council concerning all complaints received and the disposition thereof.

'22.712 ENFORCEMENT BY PRIVATE ACTION

(A) Rights created under this Article may be enforced by civil action in the state courts of general jurisdiction pursuant to the provisions in KRS 344.450 and 344.270.

'22.713 OBSTRUCTION AND RETALIATION

The provisions of KRS 344.280, as such provisions may be amended, relating to Obstruction and Retaliation, are adopted by reference herein.

SECTION II

All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

FIRST READING: _____, 2014.

SECOND READING: _____, 2014.

APPROVED:

Steven Connelly, Mayor

CITY OF BERA, KENTUCKY

ATTEST:

Clerk of the City Council

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