

**STATE OF GEORGIA
CITY OF DUNWOODY**

ORDINANCE 2019-XX-XX

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES OF THE CITY OF DUNWOODY, GEORGIA, BY ADOPTING A NEW ARTICLE VIII, "UNLAWFUL DISCRIMINATION" IN CHAPTER 24 (OFFENSES AND MISCELLANEOUS PROVISIONS); AND BY ADOPTING A NEW ARTICLE IX, "HATE CRIME TRAINING AND DOCUMENTATION" IN CHAPTER 24 (OFFENSES AND MISCELLANEOUS PROVISIONS) AND FOR ALL OTHER LAWFUL PURPOSES

WHEREAS, the Mayor and Council of the City of Dunwoody ("City Council") are charged with the protection of the public health, safety and welfare within the City of Dunwoody; and

WHEREAS, the Mayor and Council of the City of Dunwoody believe that expanding the City of Dunwoody offenses to include certain crimes of discrimination where its authority is not preempted by Federal or State law or the alleged discrimination is not subject to other remedies under Federal or State law;

NOW, THEREFORE, THE MAYOR AND COUNCIL OF THE CITY OF DUNWOODY, GEORGIA HEREBY ORDAIN that the Code of Ordinances of the City of Dunwoody shall be amended as follows:

Section 1: A new Article VIII titled "Unlawful Discrimination" shall be created in Chapter 24, "Offenses and Miscellaneous Provisions," which shall read as follows:

ARTICLE VIII –UNLAWFUL DISCRIMINATION

Sec. 24-190 - Purpose and intent. It is the purpose and intent of the Dunwoody City Council to protect and safe guard the right and opportunity of all persons to be free from all forms of discrimination, including discrimination based on actual or perceived race, color, religion, national origin, ancestry, sex, sexual orientation, gender identify, age, disability, marital status, familial status, or veteran/military status. The Council's purpose in enacting this ordinance is to promote the public health and welfare of all persons who live and work in the City of Dunwoody. It is important for the City to ensure that all persons with in the City have equal access to employment, housing, and public accommodations.

Sec. 24-191 - Definitions. For the purposes of this ordinance, the following terms shall have the following meanings:

Age means an individual's status as having obtained forty or more years of age.

Business means any person or entity conducting business with in the city, which is required to obtain a license or permit.

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Discriminate, discrimination or discriminatory means any act, policy or practice that, regardless of intent, has the effect of subjecting any person to differential treatment as a result of that person's actual or perceived race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteran status.

Employee means any individual employed by or seeking employment from an employer, excluding any individual employed by his or her parents, spouse, or child.

Employer means a person who employs one or more employees in the City of Dunwoody, or any agent of such person.

Familial status means an individual's past, current or prospective status as parent or legal guardian to a child or children below the age of eighteen (18) who may or may not reside with that individual.

Gender identity means the actual or perceived gender-related identity, expression, appearance, or mannerisms, or other gender-related characteristics of an individual, regardless of the individual's designated sex at birth.

Hearing officer means a person charged with determining the validity of alleged violations of this article, and upon determining that a violation has occurred, assessing appropriate damages, penalties, fines or costs.

Marital status means an individual's past, current, or prospective status as single, married, domestically partnered, in a civil union, divorced, or widowed.

National origin means an individual's, or an individual's ancestors, place of origin.

Place of public resort place of public resort, accommodation, assemblage, or amusement means any place, store, or other establishment, either licensed or unlicensed, that supplies accommodations, goods, or services to the general public, or that solicits or accepts the patronage or trade of the general public, or that is supported directly or indirectly by government funds.

Religion means all aspects of religious belief, observance, and practice.

Religious organization means an entity which conducts regular worship services or is qualified as a religious organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as now or hereafter amended, that is not required to file IRS Form 990, return of Organization Exempt from Income Tax, under any circumstances.

Sexual orientation means an actual or perceived homosexuality, heterosexuality, or bisexuality.

Veteran / military status means an individual's status as one who serves or served in the uniformed services, military, naval or air service, and who was discharged or released under conditions other than dishonorable.

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Sec. 24-113 - Civil rights declared. The right of an otherwise qualified person to be free from discrimination because of that person's actual or perceived race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteran/military status is recognized as and declared to be a civil right. This right shall include, but not be limited to, all of the following:

- (a) The right to obtain and hold employment and the benefits associated therewith without discrimination.
- (b) The right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement without discrimination.
- (c) The right to engage in property transactions, including obtaining housing for rental or sale and credit therefor, without discrimination.
- (d) The right to exercise any right granted under this ordinance without suffering coercion or retaliation.

Sec. 24-192 – Exceptions to Discrimination. Notwithstanding the foregoing, the following are not discriminatory practices prohibited by Sec. 24-112 (Discriminate, discrimination or discriminatory) of this ordinance:

- (a) A religious corporation, association, or society that employs an individual of a particular religion to perform work connected with the performance of religious activities by the corporation, association, or society.
- (b) An employer who observes the conditions of a bona fide affirmative action plan or a bona fide seniority system which is not a pretext to evade the purpose s of this ordinance.
- (c) A business is not required to hire unqualified or incompetent personnel.
- (d) This ordinance does not prohibit an employer from requiring an employee, during the employee's hours at work, to adhere to reasonable and equitable dress or grooming standards not prohibited by other provisions of Federal, State or local law, provided that all employees are permitted to dress in a manner consistent with their gender identity.
- (e) This ordinance does not prohibit a nonprofit private club in fact not open to the public, which as an incident to its primary purpose provides lodging which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy to its members or from giving preference to its members.
- (f) A business is not required to make changes to any existing facility that would require a building permit, except as otherwise required by law.

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- (g) This ordinance does not prohibit a religious organization from limiting its non-commercial accommodations, advantages, facilities, membership, and privileges to persons of the same religion.

Sec. 24-193 - Enforcement. Subject to the procedures developed by the City of Dunwoody, the City shall receive, initiate, investigate, seek to conciliate, hold hearings on and /or pass upon complaints alleging violations of this ordinance.

- (a) Any person aggrieved by a potential violation of this ordinance may file a complaint with the City Clerk on a form to be provided by the City. Any such complaint must be filed within ninety (90) calendar days after the alleged act of discrimination. A filing fee of \$50 shall be paid by the complainant at the time of filing and may be refunded upon a finding in the complainant's favor.
- (b) The City Clerk shall cause the complaint to be served to the alleged violator with in seven (7) calendar days of receipt of properly filed complaint via certified mail, return receipt requested, or via statutory overnight delivery.
- (c) The City Clerk shall cause a copy of the complaint to be served upon the City Manager, Mayor and City Council with in three (3) calendar days of receipt of properly filed complaint, via electronic mail.
- (d) The City Manager shall refer the complaint to a mediator for non-binding mediation. Notice of mediation will be sent to the complainant and alleged violator ten (10) calendar days in advance. Participation is voluntary however the case shall be dismissed should the complainant not attend or show just cause for not participating. Any mediation hereunder shall be conducted in accordance with procedures to be established by the mediator.
- (e) If, with in fifteen (15) days of the conclusion of mediation, either party notifies the City Clerk in writing that such person is dissatisfied with the results, or if the alleged violator elects not to participate in mediation, the complaint shall be referred to a Hearing Officer appointed by the City Manager. The Hearing Officer shall be a competent attorney at law of good standing in his/her profession and have experience in the area of constitutional law and employment discrimination.
- (f) The Hearing Officer shall review the complaint and answer, if any, to determine if the complaint is in conformity of the requirements, is unjustified, frivolous, or patently unfounded, or demonstrates facts sufficient enough to invoke disciplinary jurisdiction as set forth in this ordinance. Should the Hearing Officer determine that the complaint does not meet requirements, he/she may dismiss, however must state the reasons for dismissal in his/her report.
- (g) Upon determination that the complaint should not be dismissed, the Hearing Officer shall be empowered to collect evidence and information concerning any complaint and add the findings and results of its investigations to the file.

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- (h) In all hearing officer proceedings, the burden of proof shall be placed upon the complaining party. Further, the quantum of proof required to establish a violation under this ordinance shall be based upon a preponderance of the evidence.
- (i) In all hearing officer proceedings, hearsay evidence shall be admissible. Should the Hearing Officer discredit hearsay evidence or otherwise exclude evidence, that decision must be explained in writing in the final report.
- (j) Either party may call a witness by submitting a request to the hearing officer, seven (7) calendar days in advance of the hearing. The request must explain the importance of the witness. Either party may choose to be represented by legal counsel or to not testify.
- (k) Within seven (7) calendar days of completion of the investigation, to include a hearing. The Hearing Officer shall either:
 - 1. Dismiss the complaint on the grounds that it is unjustified, frivolous, patently unfounded or fails to state facts sufficient to invoke the disciplinary jurisdiction of the City of Dunwoody, or
 - 2. Find that a violation of this ordinance has occurred, and thus the Hearing Officer may apply a civil penalty of \$500 for the first violation and \$1000 for subsequent violations. The Mediator's fees and the Hearing Officer's fees shall be assessed to the non-prevailing party unless the Hearing Officer determines that circumstances warrant assessing the cost in some other manner.
 - (a) The Hearing Officer must submit all documentation of his/her decisions to the City Manager, Mayor and City Council with in three (3) calendar days of the conclusion and determination of the claim.
 - (b) Any party adversely affected by the final decision regarding the complaint may appeal to the Superior Court of Dekalb County by Writ of Certiorari. The appeal must be filed in writing with the City Clerk within thirty (30) calendar days of the adverse decision.

Sec. 24-194 – Exception for Preemption or Existing Legal Remedies.

Notwithstanding the foregoing, the remedies provided in this ordinance shall not be available to an aggrieved party where said remedy is preempted by Federal or State law or an existing remedy pursuant to Federal or State law exists in relation to the activities set out as the basis of the Complaint. Any accused party may file a preliminary motion with the City Clerk for a determination of whether the activity of the complaint is exempt based upon this subsection. Such determination shall be appealable to the Superior Court of Dekalb County by Writ of Certiorari. The appeal must be filed in writing with the City Clerk within thirty (30) calendar days of the conclusion of the action.

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Secs. 24-195 to 24-199 – Reserved.

Section 2: A new Article IX titled "Hate Crime Training and Documentation" shall be created in Chapter 24, "Offenses and Miscellaneous Provisions," which shall read as follows:

ARTICLE IX – HATE CRIME TRAINING AND DOCUMENTATION

Sec. 24-200 – Hate Crime Training and Documentation.

This ordinance may not be construed to limit any other remedies available under local, state, or federal law.

Definition of hate crime. Any crime committed because of the actual or perceived race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteran/military status of the victim.

(a) Responsibilities of law enforcement and other officials.

1. The City of Dunwoody shall develop guidelines for the identification, investigation, documentation, and reporting of hate crimes committed within the corporate limits of the City of Dunwoody.
2. The City of Dunwoody shall provide training to its law enforcement personnel on local, state, and federal laws involving hate crimes as well as departmental policies on proper identification, investigation, documentation, and reporting of hate crimes.
3. The City of Dunwoody shall ensure that sufficient resources are made available to the Dunwoody Police Department to develop and implement a standardized system for collecting and analyzing hate crimes committed within the corporate limits of the City.
4. The City of Dunwoody shall provide annual statistical data regarding the occurrence of hate crimes and the groups or individuals targeted to the Federal Bureau of Investigation, pursuant to 28 U.S.C. 534, for entry into the national crime information databases.

SO ORDAINED, this **10th** day of **June**, 2019.

Approved by:

Approved as to Form and Content

Denis L. Shortal, Mayor

City Attorney's Office

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Attest:

Sharon Lowery, City Clerk
(SEAL)