

City of Henderson, Kentucky

NOTICE OF CALLED TOWN HALL WORK SESSION

Monday, May 6, 2019

May 1, 2019

Commissioner Patti Bugg  
Commissioner X R. Royster, III  
Commissioner Bradley S. Staton  
Commissioner Austin P. Vowels

Dear Board Members:

The called Town Hall Work Session is scheduled for 5:30 p.m. on Monday, May 6, 2019, in the training room of the Municipal Service Center located at 1449 Corporate Court, Henderson, KY 42420. The items on the agenda for review are as follows:

A G E N D A

1. Roll Call
2. Panel Debate of Fairness Ordinance
  - Richard Nelson, Commonwealth Policy Center
  - Josh Hershberger, Attorney
  - Chris Hartman, Kentucky Fairness
  - Enid Trucious-Haynes, American Civil Liberties Union of Kentucky
  - Moderated by Bill Stephens
3. Review of Ordinance by City Attorney
4. Statement by Henderson City/County Human Rights Commission
5. Public Comments on Fairness Ordinance
6. Adjournment

Respectfully,

\_\_\_\_\_  
Steve Austin, Mayor

A copy of the foregoing notice received and service thereof waived this 6<sup>th</sup> day of May 2019.

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Commissioner Patti Bugg

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Commissioner X R. Royster, III

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Commissioner Austin P. Vowels

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Commissioner Bradley S. Staton

AN ORDINANCE AMENDING CHAPTER 10 OF THE CODE OF ORDINANCES  
TO PROHIBIT DISCRIMINATORY PRACTICES  
ON THE BASIS OF SEXUAL ORIENTATION  
IN EMPLOYMENT, HOUSING, AND PUBLIC ACCOMMODATIONS

WHEREAS, it is the policy of the Board of Commissioners to safeguard all individuals within the City of Henderson from discrimination of all kinds including discrimination based on sexual orientation and gender identity in connection with employment, housing and public accommodations; and

WHEREAS, the City desires to implement a policy to protect all individuals within the City from discrimination in housing, employment and public accommodations on account of gender identity and sexual orientation in an effort to protect an individual's personal dignity, to preserve the general welfare of the citizenry and to promote economic development in the City;

WHEREAS, the Board of Commissioners recognizes the inherent worth of all of its citizens; and

WHEREAS, KRS 344.300 authorizes cities to adopt ordinances prohibiting all forms of discrimination, including those in employment, public accommodations, and housing.

NOW, THEREFORE, BE IT ORDAINED by the City of Henderson, Kentucky, that Chapter 10 of the Code of Ordinances on Civil Rights is hereby amended with the addition of Article IV, Sections 10-40 through 10-49, titled *Unlawful Discrimination on the Basis of Sexual Orientation or Gender Identity in Employment, Housing, and Public Accommodations*, to read as follows:

**ARTICLE IV. UNLAWFUL DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION IN  
EMPLOYMENT, PUBLIC ACCOMMODATIONS, AND HOUSING**

Sec. 10-41. - Definitions.

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

*Human Rights Commission.* Joint City-County Human Rights Commission that was created by ordinance in 1962 and amended in 1980 and referred to in Section 10-16 of this Chapter and hereby referred to in Article IV of this Chapter as the Commission.

*Commissioner.* A member of the Commission.

*Discrimination.* Any act or practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial or any other act or practice of differentiation or preference in the treatment of a person because of gender identity and/or sexual orientation.

*Employee.* An individual employed by an employer, but does not include an individual employed by his parents, spouse or child, or an individual employed to render services as a domestic in the home of the employer.

*Employer.* A person who has eight (8) or more employees within the state in each of twenty (20) or more calendar weeks in the current or preceding calendar year or an agent of such a person.

*Employment agency.* A person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer, and includes an agent of such person.

*Financial institution.* A bank, banking organization, mortgage company, insurance company, or other lender to whom application is made for financial assistance for the purchase, lease, acquisition, construction, rehabilitation, repair, maintenance, or improvement of real property, or an individual employed or acting on behalf of any of these.

*Gender identity* means a person's gender-related mannerisms, appearance, style of dress, characteristics, or identity, without regard to the person's designated sex at birth.

*Housing accommodation.* Includes improved and unimproved property and means a building, structure, lot or part thereof which is used or occupied, or is intended, arranged or designed to be used or occupied, as the home or residence of one or more individuals.

*Labor organization.* A labor organization or an agent of such an organization, including an organization of any kind, an agency or an employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, or a conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

*Person.* Includes one (1) or more individuals, labor unions, joint apprenticeship committees, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, or other legal or commercial entity.

*Place of public accommodations.* Includes any place, store or other establishment, either licensed or unlicensed, which supplies goods or services to the general public or which solicits or accepts the patronage or trade of the general public or which is supported directly or indirectly by government funds, except that:

- (1) A private club is not a place of public accommodations if its policies are determined by its members and its facilities or services are available only to its members and their bona fide guests; and
- (2) "Place of public accommodations" does not include beauty shops or barber shops as defined in [KRS 317.410](#) nor a rooming or boarding house containing not more than five (5) rooms for rent or hire and which is within a building occupied by the proprietor as his residence, nor establishments catering exclusively to men or women only which do not otherwise violate a state or Federal law prohibiting such discrimination.

*Real estate broker or real estate sales-person.* An individual, whether licensed or not, who, on behalf of others, for a fee, commission, salary, or other valuable consideration, or who with the intention or expectation of receiving or collecting the same, lists, sells, purchases, exchanges, rents or leases real estate, or the improvements thereon, including options, or who negotiates or attempts to negotiate on behalf of others a loan secured by mortgage or other encumbrance, upon a transfer of real estate, or who is engaged in the business of charging an advance fee or contracting for collection of a fee in connection with a contract whereby he undertakes to promote the sale, purchase, exchange, rental or lease of real estate through its listing in a publication issued primarily for such purpose; or an individual employed by or acting on behalf of any of these.

*Real estate operator.* Any individual or combination of individuals, labor unions, joint apprenticeship committees, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees in bankruptcy, receivers or other legal or commercial entity, the county or any of its agencies, that is engaged in the business of selling, purchasing, exchanging, renting or leasing real estate, or the improvements thereon, including options, or that derives income, in whole or in part, from the sale, purchase, exchange, rental or lease of real estate, or an individual employed by or acting on behalf of any of these.

*Real property.* Includes buildings, structures, real estate, lands, tenements, leaseholds, cooperatives, condominiums, and hereditaments, corporeal and incorporeal, or any interest in the above.

*Sexual orientation.* An individual's actual or imputed heterosexuality, homosexuality or bisexuality.

#### Section 10-42 - Unlawful employment practices.

- (a) It is an unlawful practice for an employer:
  - (1) To fail or refuse to hire, or to discharge any individual, or otherwise discriminate against an individual with respect to their compensation, terms, conditions, or privileges of employment, because of such individual's gender identity or sexual orientation; or
  - (2) To limit, segregate, or classify an employee in any way which would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect their status as an employee, because of such individual's gender identity or sexual orientation.
- (b) It is an unlawful practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, an individual because of gender identity or sexual orientation, or to classify or refer for employment an individual on the basis of gender identity or sexual orientation.
- (c) It is an unlawful practice for a labor organization:
  - (1) To exclude or to expel from its membership, or otherwise to discriminate against, a member or applicant for membership because of their gender identity or sexual orientation; or
  - (2) To limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment an individual, in any way which would deprive or tend to deprive an individual of employment opportunities, or otherwise adversely affect their status as an employee or as an applicant for employment, because of gender identity, or sexual orientation; or
  - (3) To cause or attempt to cause an employer to discriminate against an individual in violation of this section.
- (d) It is an unlawful practice for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against an individual because of gender identity or sexual orientation in admission to, or employment in, any program established to provide apprenticeship or other training.

- (e) It is an unlawful practice for an employer, labor organization, or employment agency to print or publish or cause to be printed or published a notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by the employment agency, indicating any preference, limitation, specification, or discrimination based on gender identity, or sexual orientation except that such a notice or advertisement may indicate a preference, limitation, or specification based on gender identity or sexual orientation is a bona fide occupational qualification for employment.
- (f) Nothing herein shall be construed to prevent an employer from:
  - (1) Enforcing a written employee dress policy; or
  - (2) Designating appropriate restroom and shower facilities.

Sec.10-43. - Exceptions.

- (a) Notwithstanding any other provision of this chapter, it shall not be an unlawful practice for:
  - (1) An employer to hire and employ employees, or an employment agency to classify or refer for employment an individual, 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 retaining programs to admit or employ an individual in any such program on the basis of gender identity or sexual orientation when gender identity or sexual orientation is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise; or
  - (2) A school, college, university, or other educational institution is in whole or substantial part owned, supported, controlled or managed 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 calculated by such organization to promote the religious principles for which it is established and maintained; or
  - (3) 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, provided that such differences are not the result of an intention to discriminate because of gender identity or sexual orientation, nor is it an unlawful practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of gender identity or sexual orientation.
- (b) The provisions of Section 10-42 in regard to sexual orientation or gender identity shall not apply to a religious institution, or to an organization operated for charitable or educational purposes, which is operated, supervised, or controlled by a religious corporation, association, or society.

Section 10-44 - Unlawful discriminatory practices in public accommodations.

- (a) Except as otherwise provided in this chapter, it is an unlawful practice for a person to deny an individual the full and equal enjoyment of the goods, services, facilities, privileges,

advantages, and accommodations of a place of public accommodations, as defined in Section 10-41, on the grounds of gender identity or sexual orientation.

- (b) It is an unlawful practice for a person, directly or indirectly, to publish, circulate, issue, display, or mail, or cause to be published, circulated, issued, displayed, or mailed, a written, printed, oral, or visual communication, notice, or advertisement, which indicates that the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodations, will be refused, withheld, or denied an individual on account of gender identity or sexual orientation or that the patronage of, or presence at, a place of public accommodations, resort, or amusement of an individual on account of gender identity or sexual orientation is objectionable, unwelcome, unacceptable, or undesirable.
- (c) This section shall not apply with regards to sexual orientation and gender identity to the following:
  - (1) Restrooms, shower rooms, bathhouses, and similar facilities which are, by their nature, distinctly private;
  - (2) YMCA, YWCA and similar dormitory-type lodging facilities;
  - (3) The exemptions contained in the definitions of place of public accommodations as set forth in Section 10-41;
  - (4) Hospitals, nursing homes, schools, childcare facilities, jails, penal or similar facilities with respect to any requirement that men and women not be in the same room.

Sec. 10-45. - Unlawful housing practices.

Except as otherwise provided herein, it shall be a prohibited, unlawful practice:

- (1) To refuse to sell, purchase, exchange, rent or lease, or otherwise deny or withhold any housing accommodation from a person because of their gender identity or sexual orientation;
- (2) To discriminate against a person because of that person's gender identity or sexual orientation in terms, conditions, or privileges of the sale, purchase, exchange, rental, or lease of any housing accommodation or in the furnishing of the facilities or services in connection therewith;
- (3) To refuse to receive or transmit or negotiate a bona fide offer to sell, purchase, exchange, rent or lease any housing accommodation from or to a person because of their gender identity or sexual orientation;
- (4) To represent to a person that any housing accommodation is not available for inspection, sale, purchase, exchange, rental, or lease when in fact it is so available because of that person's gender identity or sexual orientation.

Sec.10-46. - Exceptions.

(a) Nothing in Section 10-45 shall apply to:

- (1) The rental of a housing accommodation in a building which contains housing accommodations for not more than two (2) families living independently of each other, if the owner or a member of his family resides in one (1) of the housing accommodations; or

- (2) The rental of one (1) room or one (1) rooming unit in a (portion of a) housing accommodation by an individual (the occupant of the housing accommodation or by the owner of the housing accommodation) if he or a member of his family resides therein; or
  - (3) A religious institution, or an organization operated for charitable or educational purposes, which is operated, supervised or controlled by a religious corporation, association or society, to the extent that the religious corporation, association, or society limits or gives preference in the sale, lease, rental, assignment, or sublease of real property to individuals of the same religion, or makes a selection of buyers, tenants, lessees, assignees, or sublessees, that is calculated by such religious corporation, association, or society to promote the religious principles for which it is established or maintained.
- (b) Nothing in this chapter shall be construed to affect the legal rights of a private individual homeowner to dispose of his property through private sale without the aid of any real estate operator, broker or salesperson, and without advertising or public display.
  - (c) Nothing in this article shall require a real estate operator to negotiate with any individual who has not shown evidence of financial ability to consummate the purchase or rental of a housing accommodation.
  - (d) Any exception listed in KRS 344.362.

Sec..10-47 - Violations committed as agent for another.

It shall be no defense to a violation of this article by a real estate operator, real estate broker, real estate salesperson, financial institution, or other person subject to the provisions of this article that the violation was requested, sought or otherwise procured by a person not subject to the provisions of this article.

Section 10-48. - Conspiracy to violate chapter.

It shall be an unlawful practice for a person, or for two (2) or more persons, to conspire:

- (1) To retaliate or discriminate in any manner against a person because they have opposed a practice declared unlawful by this chapter, or because they have made a charge, filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding, or hearing under this chapter; or
- (2) To aid, abet, incite, compel, or coerce a person to engage in any of the acts or practices declared unlawful by this chapter; or
- (3) To obstruct or prevent a person from complying with the provisions of this chapter or any order issued thereunder; or
- (4) To resist, prevent, impede, or interfere with the Human Rights Commission, or any of its members or representatives, in the lawful performance of duty pursuant to this Code.

Sec.10-49. - Complaint procedure.

- (a) An individual claiming to be aggrieved by an unlawful practice relating to gender identity or sexual orientation may file with the Commission a written (sworn) complaint stating that an unlawful practice has been committed, setting forth the facts upon which the complaint is based, and setting forth the facts sufficient to enable the Commission to identify the

person(s) charged (respondent(s)). The complaint must be filed within six (6) months after the alleged unlawful practice occurred.

- (1) Upon filing of the complaint, the Commission, or its designated committee, shall, after notifying the City Manager's office, make a prompt and full investigation of each complaint.
- (2) If it is determined that there is no probable cause to believe that the respondent is engaged in an unlawful practice, the Commission shall issue an order dismissing the complaint.
- (3) If it is determined, after investigation, that there is probable cause to believe the respondent has engaged in an unlawful practice, the Commission shall endeavor to eliminate the alleged unlawful practice by conference conciliation, and persuasion. The terms of the conciliation agreement reached with the respondent may require them to refrain from the Commission of unlawful discriminatory practices in the future and make such further provisions as may be agreed upon between the Commission and the respondent. Except for the terms of the conciliation agreement, neither the Commission nor any officer or employee thereof shall make public, without the written consent of the complainant and the respondent, information concerning efforts in a particular case to eliminate an unlawful practice by conference, conciliation, or persuasion, whether or not there is a determination of probable cause or a conciliation agreement.
- (4) In any case of failure to eliminate the alleged unlawful practice by means of conference, conciliation, and persuasion, the Commission shall hold a public hearing to determine whether or not an unlawful practice has been committed. The Commission shall serve upon the respondent a statement of the charges made in the complaint and a notice of the time and place of the hearing. The hearing shall be held not less than ten (10) days after the service of the statement of charges. The respondent shall have the right to file an answer, to appear at the hearing in person or be represented by an attorney, and to examine and cross-examine witnesses. A determination of probable cause shall in no way create a presumption of a violation.
- (5) If three fourths of the Commissioners attending a duly constituted hearing determine that the respondent has engaged in an unlawful practice, the Commission shall state its findings of fact and conclusions of law and shall issue an order requiring the respondent to cease and desist from the unlawful practice. If the Commission fails to determine that the respondent has engaged in an unlawful practice, the Commission shall so state and shall issue an order dismissing the complaint.
- (6) In connection with an investigation of a complaint filed under this subsection, the Commission or its designated representatives at any reasonable time may request access to the premises, records, and documents relevant to the complaint and the right to examine, photograph, and copy evidence, but all such evidence not otherwise presented at a public hearing shall be of a confidential nature.