

## **ORDINANCE NO. 2019-18**

### **TO ENACT CHAPTER 511 OF THE CODIFIED ORDINANCES TO PROHIBIT UNLAWFUL DISCRIMINATION WITHIN THE CITY**

WHEREAS, this Council passed Resolution 2019-11 to affirm and expand the City's policy prohibiting discrimination on the basis of race, color, religion, sex, national origin, age, familial status, disability, pregnancy, sexual orientation, gender identity, or gender expression; and

WHEREAS, Council desires to adopt local prohibitions on discrimination, and to supplement existing federal and state prohibitions to prohibit discrimination on the basis of sexual orientation, gender identity, and gender expression.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WESTERVILLE, STATE OF OHIO, THAT:**

**SECTION 1:** That Chapter 511 entitled "Unlawful Discrimination" is hereby enacted to read as follows:

#### **"CHAPTER 511 Unlawful Discrimination**

##### **511.01 Definitions.**

As used in this chapter:

- (a) "Age" means at least forty years old, except as otherwise provided in this chapter.
- (b) "Aggrieved individual" means an individual who claims to have been injured by an unlawful discriminatory act or practice described in this chapter.
- (c) "Burial lot" means any lot for the burial of deceased individuals within any public burial ground or cemetery, including, but not limited to, cemeteries owned and operated by companies or associations incorporated for cemetery purposes.
- (d) "Commission" means the Columbus Community Relations Commission and its agents and subcontractors or such comparable agency as Council may approve.
- (e) "Common use areas" means rooms, spaces, or elements inside or outside a building that are made available for the use of residents of the building or their guests, and includes, but is not limited to, hallways, lounges, lobbies, laundry rooms, refuse rooms, mail rooms, recreational areas, and passageways among and between buildings.

- (f) "Complainant" means an aggrieved individual who, pursuant to the provisions of this chapter, files with the Clerk of Council a written complaint alleging an unlawful discriminatory act or practice.
- (g) "Controlled substance" has the same meaning as in section 3719.01 of the Ohio Revised Code.
- (h) "Covered multifamily dwellings" means buildings consisting of four or more units if such buildings have one or more elevators and ground floor units in other buildings consisting of four or more units.
- (i) "Disability" or "Disabled" with respect to an individual means a physical or mental impairment that substantially limits one or more major life activities, including the functions of caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working; a record of a physical or mental impairment; or being regarded as having a physical or mental impairment. "Disability" does not include any physiological disorder or condition, mental or psychological disorder, or disease or condition caused by an illegal use of any controlled substance by an employee, applicant, or other individual, if an employer, employment agency, personnel placement service, labor organization, or joint labor-management committee acts on the basis of that illegal use.
- (j) "Disabled tenant" means a tenant or prospective tenant who is an individual with a disability.
- (k) "Discriminate" means to differentiate and treat differently, including to segregate or separate.
- (l) "Discriminatory restrictive covenant" means any specification in a deed, land contract, or lease limiting the transfer, rental, lease, or other use of any housing accommodations because of race, color, religion, sex, national origin, age, familial status, disability, pregnancy, sexual orientation, gender identity, or gender expression, as a condition of affiliation or approval.
- (m) "Dwelling unit" means a single unit of residence for a family of one or more individuals.
- (n) "Employee" means an individual employed by any employer but does not include any individual employed in the domestic service of any person.
- (o) "Employer" includes any person who regularly employs for compensation four or more individuals, excluding the employer's parents, spouse, and children, including any person acting directly or indirectly in the interest of an employer, provided "employer" does not include a public school system, or an agency of government other than the City.

- (p) "Employment agency" includes any person regularly undertaking, with or without compensation, to procure opportunities for employment or to procure, recruit, refer, or place employees.
- (q) "Familial status" means having either of the following family characteristics, where "family" also includes an individual:
- (1) One or more individuals who are under eighteen years of age and who are domiciled with a parent or guardian having legal custody of the individual or domiciled, with the written permission of the parent or guardian having legal custody, with a designee of the parent or guardian;
  - (2) Any individual who is pregnant or in the process of securing legal custody of any individual who is under eighteen years of age.
- (r) "Gender Expression" means external manifestations of gender, expressed through one's behavior or appearance, that may or may not be those traditionally associated with the individual's assigned sex at birth.
- (s) "Gender Identity" means an individual's sense of having, or being perceived as having, a gender that may or may not be traditionally associated with the individual's assigned sex at birth.
- (t) "Hearing Officer" means a neutral independent contractor, hired by the City, who conducts an administrative hearing based on a complaint filed pursuant to the provisions of this chapter.
- (u) "Housing accommodations" includes any building or structure, or portion of a building or structure, that is used or occupied or is intended, arranged, or designed to be used or occupied as the home residence, dwelling, dwelling unit, or sleeping place of one or more individuals, groups, or families whether or not living independently of each other; and any vacant land offered for sale or lease. "Housing accommodations" also includes any housing accommodations held or offered for sale or rent by a real estate broker, salesperson, or agent, by any other person pursuant to authorization of the owner, by the owner, or by the owner's legal representative. "Housing accommodations" does not include any housing accommodations owned or operated by a religious organization when they are owned or operated for other than a commercial purpose and offered to individuals of the same religion.
- (v) "Labor organization" includes any organization that exists, in whole or in part, for the purpose of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or other mutual aid or protection in relation to employment.

(w) "Law Director" means the individual appointed by Council, pursuant to Article V Section 2 of the Westerville Charter, as "Director of Law" or the designee of such individual.

(x) "Person" includes one or more individuals, partnerships, associations, organizations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, and other organized groups of individuals. "Person" also includes, but is not limited to, any owner, lessor, assignor, builder, manager, broker, salesperson, appraiser, agent, employee, or lending institution.

(y) "Physical or mental impairment"

(1) "Physical or mental impairment" means any of the following except as provided in division (2) of this section:

A. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine;

B. Any mental or psychological disorder, including, but not limited to, intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities;

C. Diseases, blood disorders and conditions, including, but not limited to, orthopedic, visual, speech, and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, human immunodeficiency virus infection, intellectual disability, emotional illness, drug addiction, and alcoholism.

(2) "Physical or mental impairment" does not mean any of the following:

A. Pedophilia, exhibitionism, voyeurism, or other sexual behavior disorders;

B. Compulsive gambling, kleptomania, or pyromania;

C. Psychoactive substance use disorders resulting from the current illegal use of a controlled substance.

(z) "Place of public accommodation" means any inn, restaurant, eating house, hotel, motel, bank or other financial services institution, barbershop, public conveyance by air, land, or water, theater, store, other place for the sale of merchandise, or any other place of public accommodation or amusement where the accommodations, advantages, facilities, or privileges are available to the public, provided it shall not

apply to accommodations of a public education system, or an agency of government other than the City.

- (aa) “Protected Class” means a classification of individuals based on one or more of the following characteristics: race, color, religion, sex, national origin, age, familial status, disability, pregnancy, sexual orientation, gender identity, or gender expression.
- (bb) “Public use areas” means interior or exterior rooms or spaces of a privately owned building that are made available to the general public.
- (cc) “Religious organization” means a not for profit church or integrated auxiliary of a church, as those terms are used by the United States Internal Revenue Service and includes any school that incorporates substantial religious teachings or religious practices of that church in that school. Religious organization does not include any hospital or medical facility that offers medical services to the general public.
- (dd) “Respondent” means the person who is alleged to have committed or is alleged to be committing unlawful discriminatory act(s) or practices and who is identified in a written complaint filed by a complainant.
- (ee) “Senior Citizen” means an individual at least sixty years old.
- (ff) “Service animal” means a dog individually trained to do work or perform tasks for the benefit of an individual with a disability and includes an “assistance dog” as provided in section 955.011 of the Ohio Revised Code. The crime deterrent effects of an animal’s presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.
- (gg) “Sex” means the biological sex of either male or female assigned at the birth of each individual.
- (hh) “Sexual orientation” means an individual’s actual or perceived heterosexuality, homosexuality, or bisexuality.
- (ii) “Unlawful discriminatory practice” means any act or practice prohibited by this chapter.

**511.02 Unlawful discriminatory employment practices.**

- (a) It shall be an unlawful discriminatory employment practice, except where based upon applicable national security regulations established by the United States:
  - (1) For any employer, because of an individual being in a Protected Class, to discharge without just cause, to refuse to hire, or otherwise to discriminate against that individual with respect to hiring, compensation, tenure, terms, conditions, or

privileges of employment, or any matter directly or indirectly related to employment.

- (2) For an employment agency or personnel placement service, because of an individual being in a Protected Class, to do any of the following:
  - A. Refuse or fail to accept, register, classify properly, or refer for employment, or otherwise discriminate against any individual;
  - B. Comply with a request from an employer for referral of applicants for employment, if the request directly or indirectly indicates that the employer fails to comply with the provisions of this chapter.
- (3) For any labor organization to do any of the following:
  - A. Limit or restrict its membership on the basis of an individual being in a Protected Class;
  - B. Discriminate against, limit the employment opportunities of, or otherwise adversely affect the employment status, wages, hours, or employment conditions of any individual as an employee because of that individual being in a Protected Class.
- (4) For any employer, labor organization, or joint labor-management committee controlling apprentice training programs to discriminate against any individual because of that individual being in a Protected Class, in admission to, or employment in, any program established to provide apprentice training.
- (5) Except where based on a bona fide occupational qualification certified in advance by an agency of the state or federal government or a political subdivision, for any employer, employment agency, personnel placement service, or labor organization, prior to employment or admission to membership, to do any of the following:
  - A. Elicit or attempt to elicit any information concerning the Protected Class status of an applicant for employment or membership;
  - B. Use any form of application for employment, or personnel or membership blank, seeking to elicit information regarding an individual's Protected Class status; provided an employer holding a contract containing a nondiscrimination clause with the government of the United States, or any department or agency of that government, may require an employee or applicant for employment to furnish documentary proof of United States citizenship and may retain that proof in the employer's personnel records and may use photographic or fingerprint identification for security purposes;

- C. Follow a policy of denying or limiting, through a quota system or otherwise, employment or membership opportunities of any group of individuals because of the Protected Class status of the individuals in that group;
  - D. Utilize in the recruitment or hiring of individuals any employment agency, personnel placement service, training school or center, labor organization, or any other employee-referring source known to discriminate against individuals because of their being in a Protected Class.
- (6) For any employer to discriminate against an individual with a disability in any of the following ways:
- A. By limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee.
  - B. By denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such employer to make reasonable accommodation to the physical or mental impairments of the employee or applicant.
  - C. By failing to make reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual who is an applicant or employee, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the employer.
  - D. By denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, on the basis of such disabled individual's use of a service animal, provided nothing in this chapter shall be construed to require any employer, as a reasonable accommodation, to provide a service animal to a disabled individual.
- (7) For any employer to discriminate against a woman affected by pregnancy, childbirth, or related medical conditions for any employment-related purposes, including receipt of benefits under fringe benefit programs, or to fail to treat a woman so affected the same as other individuals not so affected but similar in their ability or inability to work.
- (8) For any employer to discriminate against an employee or potential employee on the basis of age in offering any job opening or in the discharge of an employee without just cause who is physically able to perform the duties and otherwise meets the established requirements of the job and laws pertaining to the relationship between employer and employee.

(b) With regard to age, it shall not be an unlawful discriminatory practice and it shall not constitute a violation of this chapter for any employer, employment agency, joint labor-management committee controlling apprenticeship training programs, or labor organization to do any of the following:

- (1) Establish bona fide employment qualifications reasonably related to the particular business or occupation that may include standards for skill, aptitude, physical capability, intelligence, education, maturation, and experience;
- (2) Observe the terms of a bona fide seniority system or any bona fide employee benefit plan, including, but not limited to, a retirement, pension, or insurance plan, that is not a subterfuge to evade the purposes of this section. However, no such employee benefit plan shall excuse the failure to hire any individual, and no such seniority system or employee benefit plan shall require or permit the involuntary retirement of any individual, because of the individual's age except as provided for in the "Age Discrimination in Employment Act Amendment of 1978", 29 U.S.C.A. 623, as amended by the "Age Discrimination in Employment Act Amendments of 1986," 29 U.S.C.A. 623, as amended, or as later amended.
- (3) Retire an employee who has attained sixty-five years of age who, for the two-year period immediately before retirement, was employed in a bona fide executive or a high policymaking position, if the employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of those plans of the employer of the employee, which equals, in the aggregate, at least forty-four thousand dollars, in accordance with the conditions of the "Age Discrimination in Employment Act Amendment of 1978", 29 U.S.C.A. 631, as amended by the "Age Discrimination in Employment Act Amendments of 1986", 29 U.S.C.A. 631, as amended, or as later amended;
- (4) Observe the terms of any bona fide apprenticeship program if the program is registered with the Ohio apprenticeship council pursuant to sections 4139.01 to 4139.06 of the Ohio Revised Code and is approved by the federal committee on apprenticeship of the United States Department of Labor.

(c) Nothing in this chapter shall be construed to prohibit any of the following:

- (1) The designation of uniform age the attainment of which is necessary for public employees to receive pension or other retirement benefits pursuant to Chapter 145., 742., 3307., 3309., or 5505. of the Ohio Revised Code;
- (2) The establishment of maximum age requirements for original appointment to a police department or fire department pursuant to sections 124.41 and 124.42 of the Ohio Revised Code;



- (3) Any establishment of a maximum age not in conflict with federal law that may be established by a municipal charter, municipal ordinance, or resolution of a board of township trustees for original appointment as a police officer or firefighter;
  - (4) Any establishment of a mandatory retirement provision not in conflict with federal law, a municipal charter, municipal ordinance, or resolution of a board of township trustees pertaining to police officers and firefighters.
- (d) Nothing in this section shall be construed to require an individual with a disability to be employed or trained under circumstances that would significantly increase the occupational hazards affecting either the individual with a disability, other employees, the general public, or the facilities in which the work is to be performed, or to require the employment or training of an individual with a disability in a job that requires the individual with a disability routinely to undertake any task, the performance of which is substantially and inherently impaired by the individual's disability.
- (e) Nothing in this chapter shall prohibit an employer, employment agency, personnel placement service, labor organization, or joint labor-management committee from doing any of the following:
- (1) Adopting or administering reasonable policies or procedures, including, but not limited to, testing for the illegal use of any controlled substance, that are designed to ensure that an individual no longer is engaging in the illegal use of any controlled substance. For purposes of this chapter, a test to determine the illegal use of any controlled substance does not include a medical examination;
  - (2) Prohibiting the illegal use of controlled substances and the use of alcohol at the workplace by employees;
  - (3) Requiring that employees not be under the influence of alcohol or not be engaged in the illegal use of any controlled substance at the workplace;
  - (4) Requiring that employees behave in conformance with the requirements established under "The Drug-Free Workplace Act of 1988", 41 U.S.C.A. 701, as amended;
  - (5) Holding an employee who engages in the illegal use of any controlled substance or who is an alcoholic to the same qualification standards for employment or job performance, and the same behavior, to which the employer, employment agency, personnel placement service, labor organization, or joint labor-management committee holds other employees, even if any unsatisfactory performance or behavior is related to an employee's illegal use of a controlled substance or alcoholism;

- (6) Exercising other authority recognized in the “Americans with Disabilities Act of 1990”, 42 U.S.C.A. 12101, as amended, including, but not limited to, requiring employees to comply with any applicable federal standards.
- (f) This section does not apply to a religious corporation, association, educational institution, or society with respect to the employment of an individual of a particular religion to perform work connected with the carrying on by that religious corporation, association, educational institution, or society of its activities.
- (g) Whoever violates this section is guilty of an unlawful discriminatory employment practice.

### **511.03 Unlawful discriminatory housing practices.**

- (a) Subject to the limitations, exceptions, and qualifications provided in section 4112.024 of the Ohio Revised Code, it shall be an unlawful discriminatory housing practice for any person to do any of the following:
  - (1) Refuse to sell, transfer, assign, rent, lease, sublease, or finance housing accommodations, refuse to negotiate for the sale or rental of housing accommodations, or otherwise deny or make unavailable housing accommodations because of an individual being in a Protected Class;
  - (2) Represent to any individual that housing accommodations are not available for inspection, sale, or rental, when in fact they are available, and the representation of unavailability is based on the individual seeking such housing accommodations being in a Protected Class;
  - (3) Discriminate against any individual in the making or purchasing of loans or the provision of other financial assistance for the acquisition, construction, rehabilitation, repair, or maintenance of housing accommodations, or any individual in the making or purchasing of loans or the provision of other financial assistance that is secured by residential real estate, because of that individual being in a Protected Class, or because the neighborhood in which the housing accommodations are located is composed of one or more Protected Classes, provided that the person, whether an individual, corporation, or association of any type, lends money as one of the principal aspects or incident to the person’s principal business and not only as a part of the purchase price of an owner-occupied residence the person is selling nor merely casually or occasionally to a relative or friend;
  - (4) Discriminate against any individual in the terms or conditions of selling, transferring, assigning, renting, leasing, or subleasing any housing accommodations or in furnishing facilities, services, or privileges in connection with the ownership, occupancy, or use of any housing accommodations, including

the sale of fire, extended coverage, or homeowners insurance, because the individual is in a Protected Class, or because of the composition, in terms of Protected Class, of the neighborhood in which the housing accommodations are located;

- (5) Discriminate against any individual in the terms or conditions of any loan of money, whether or not secured by mortgage or otherwise, for the acquisition, construction, rehabilitation, repair, or maintenance of housing accommodations because of the individual being in a Protected Class, or because of the composition, in terms of Protected Class, of the neighborhood in which the housing accommodations are located;
- (6) Refuse to consider without prejudice the combined income of both lawfully-married spouses for the purpose of extending mortgage credit to a married couple or either member of a married couple;
- (7) Except as otherwise provided in this section, make any inquiry, elicit any information, or use any form of application containing questions or entries concerning an individual's Protected Class status in connection with the sale or lease of any housing accommodations or the loan of any money, whether or not secured by mortgage or otherwise, for the acquisition, construction, rehabilitation, repair, or maintenance of housing accommodations. Any person may make inquiries, and make and keep records, concerning an individual's Protected Class status for the purpose of monitoring compliance with this chapter.
- (8) Include in any deed, land contract, transfer, rental, or lease of housing accommodations any discriminatory restrictive covenant, or honor or exercise, or attempt to honor or exercise, any discriminatory restrictive covenant;
- (9) Induce or solicit, or attempt to induce or solicit, a housing accommodations listing, sale, or transaction by representing that a change has occurred or may occur with respect to the Protected Class composition of the block, neighborhood, or other area in which the housing accommodations are located, or induce or solicit, or attempt to induce or solicit, a housing accommodations listing, sale, or transaction by representing that the presence or anticipated presence of individuals of any Protected Class in the block, neighborhood, or other area will or may have results including, but not limited to, the following:
  - A. The lowering of property values;
  - B. A change in the composition, in terms of a Protected Class, of the block, neighborhood, or other area;
  - C. An increase in criminal or antisocial behavior in the block, neighborhood, or other area;

- D. A decline in the quality of the schools serving the block, neighborhood, or other area.
- (10) Discourage or attempt to discourage the purchase by a prospective purchaser of housing accommodations, by representing that any block, neighborhood, or other area has undergone or might undergo a change in composition with respect to a Protected Class;
  - (11) Deny any individual access to or membership or participation in any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting housing accommodations, or discriminate against any individual in the terms or conditions of that access, membership, or participation, because of the individual being in a Protected Class;
  - (12) Discriminate in any manner against any individual because that individual has opposed any unlawful practice defined in this chapter, or because that individual has made a charge, testified, assisted, or participated in any manner, in any investigation, proceeding, or hearing under the provisions of this chapter;
  - (13) Refuse to sell, transfer, assign, rent, lease, sublease, or finance, or otherwise deny or withhold, a burial lot from any individual because of that individual being in a Protected Class, or because of any prospective owner or user of the lot being in a Protected Class;
  - (14) Discriminate in the sale or rental of, or otherwise make unavailable or deny, housing accommodations to any buyer or renter because of the Protected Class status of any of the following:
    - A. The buyer or renter;
    - B. An individual residing in or intending to reside in the housing accommodations after they are sold, rented, or made available;
    - C. Any individual associated with the individual described in this section.
  - (15) Discriminate in the terms, conditions, or privileges of the sale or rental of housing accommodations to any individual or in the provision of services or facilities to any individual in connection with the housing accommodations because of the Protected Class status of any of the following:
    - A. That individual;
    - B. An individual residing in or intending to reside in the housing accommodations after they are sold, rented, or made available;

C. Any individual associated with the individual described in division (a)(15)(A) or (a)(15)(B) of this section.

(16) Except as otherwise provided in this section, make an inquiry of an applicant to determine the Protected Class status of the applicant for the sale or rental of housing accommodations, an individual residing in or intending to reside in the housing accommodations after they are sold, rented, or made available, or any individual associated with such individuals. The following inquiries may be made of all applicants for the sale or rental of housing accommodations, regardless of the applicant's Protected Class:

A. An inquiry into an applicant's ability to meet the requirements of ownership or tenancy;

B. An inquiry to determine whether an applicant is qualified for housing accommodations available only to individuals with disabilities or individuals with a particular type of disability;

C. An inquiry to determine whether an applicant is qualified for a priority available to individuals with disabilities or individuals with a particular type of disability;

D. An inquiry to determine whether an applicant currently uses a controlled substance in violation of section 2925.11 of the Ohio Revised Code or a substantively comparable municipal ordinance;

E. An inquiry to determine whether an applicant at any time has been convicted of or pleaded guilty to any offense, an element of which is the illegal sale, offer to sell, cultivation, manufacture, other production, shipment, transportation, delivery, or other distribution of a controlled substance.

(17) Refuse to permit, at the expense of an individual with a disability, reasonable modifications of existing housing accommodations that are occupied or to be occupied by the individual with a disability, if the modifications may be necessary to afford the individual with a disability full enjoyment of the housing accommodations. This division does not preclude a landlord of housing accommodations that are rented or to be rented to a disabled tenant from conditioning permission for a proposed modification upon the disabled tenant's doing one or more of the following:

A. Providing a reasonable description of the proposed modification and reasonable assurances that the proposed modification will be made in a workerlike manner and that any required building permits will be obtained prior to the commencement of the proposed modification;

- B. Agreeing to restore at the end of the tenancy the interior of the housing accommodations to the condition they were in prior to the proposed modification, but subject to reasonable wear and tear during the period of occupancy, if it is reasonable for the landlord to condition permission for the proposed modification upon the agreement;
  - C. Paying into an interest-bearing escrow account that is in the landlord's name, over a reasonable period of time, a reasonable amount of money not to exceed the projected costs at the end of the tenancy of the restoration of the interior of the housing accommodations to the condition they were in prior to the proposed modification, but subject to reasonable wear and tear during the period of occupancy, if the landlord finds the account reasonably necessary to ensure the availability of funds for the restoration work. The interest earned in connection with an escrow account described in this division shall accrue to the benefit of the disabled tenant who makes payments into the account.
- (18) Condition permission for a proposed modification of a dwelling unit upon a disabled tenant's payment of a security deposit that exceeds the customarily required security deposit of all tenants of the particular housing accommodations.
- (19) Refuse to make reasonable accommodations in rules, policies, practices, or services when necessary to afford an individual with a disability equal opportunity to use and enjoy a dwelling unit, including associated public and common use areas;
- (20) Fail to comply with the standards and rules adopted under division (A) of section 3781.111 of the Ohio Revised Code;
- (21) Discriminate against any individual in the selling, brokering, or appraising of real property because of the individual being in a Protected Class;
- (22) Fail to design and construct covered multifamily dwellings for first occupancy in accordance with the following conditions:
- A. The dwellings shall have at least one building entrance on an accessible route, unless it is impractical to do so because of the terrain or unusual characteristics of the site.
  - B. With respect to dwellings that have a building entrance on an accessible route, all of the following apply:
    - 1. The public use areas and common use areas of the dwellings shall be readily accessible to and usable by an individual with a disability.

2. All the doors designed to allow passage into and within all premises shall be sufficiently wide to allow passage by an individual with a disability who is in a wheelchair.
3. All premises within covered multifamily dwelling units shall contain an accessible route into and through the dwelling; all light switches, electrical outlets, thermostats, and other environmental controls within such units shall be in accessible locations; the bathroom walls within such units shall contain reinforcements to allow later installation of grab bars; and the kitchens and bathrooms within such units shall be designed and constructed in a manner that enables an individual in a wheelchair to maneuver about such rooms.

(23) For any person to discriminate in any manner against any individual because that individual has opposed any unlawful discriminatory practice defined in this section or because that individual has made a charge, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing under this chapter or sections 4112.01 to 4112.07 of the Ohio Revised Code.

(24) For any person to knowingly aid or abet the doing of any act declared by this section to be an unlawful discriminatory practice, to knowingly obstruct or prevent any person from complying with this chapter or any order issued under it, or to knowingly attempt directly or indirectly to commit any act declared by this section to be an unlawful discriminatory practice.

- (b) Nothing in this chapter shall bar any bona fide private or fraternal organization that, incidental to its primary purpose, owns or operates lodgings for other than a commercial purpose, from limiting the rental or occupancy of the lodgings to its members or from giving preference to its members.
- (c) Nothing in this chapter limits the applicability of any reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy housing accommodations.
- (d) Nothing in this chapter prohibits the owners or managers of housing accommodations from implementing reasonable occupancy standards based on the number and size of sleeping areas or bedrooms and the overall size of a dwelling unit, provided that the standards are not implemented to circumvent the purposes of this chapter and are formulated, implemented, and interpreted in a manner consistent with this chapter and any applicable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy housing accommodations.

- (e) Nothing in this chapter requires that housing accommodations be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.
- (f) Nothing in this chapter pertaining to unlawful discriminatory housing practice shall be construed to apply to “housing for older persons” as defined and provided in section 42 U.S.C. 3607 (b)(2), as amended.
- (g) Nothing in this chapter shall be construed to require any person selling or renting property to modify the property in any way or to exercise a higher degree of care for an individual with a disability, to relieve any individual with a disability of any obligation generally imposed on all individuals regardless of disability in a written lease, rental agreement, or contract of purchase or sale, or to forbid distinctions based on the inability to fulfill the terms and conditions, including financial obligations, of the lease, agreement, or contract.
- (h) Whoever violates this section is guilty of unlawful discrimination in housing accommodations.

#### **511.04 Unlawful discriminatory practices in public accommodations.**

- (a) No owner, operator, or manager of a place of public accommodation shall deny to any individual or permit any employee to deny to any individual, except for reasons applicable alike to all individuals regardless of them being in a Protected Class, the full enjoyment of the accommodations, advantages, facilities, or privileges of the place of public accommodation.
- (b) No owner, operator, or manager of a place of public accommodation shall deny to any individual with a disability the full enjoyment of the accommodations, advantages, facilities, or privileges of the place of public accommodation on the basis of such individual’s use of a service animal, provided:
  - (1) The disabled individual using the service animal may be prohibited from having the service animal present in the place of public accommodation if:
    - A. The animal is out of control, as provided by 28 CFR 35.136(d), and the animal's handler does not take effective action to control it; or
    - B. The animal is not housebroken.
  - (2) If it is not readily apparent what service a service animal provides, the owner, operator, manager, or an employee of a place of public accommodation may make the following two inquiries:



- A. Whether the service animal is required because of the disabled individual's disability, provided an inquiry may not be made as to:
    - 1. The disabled individual's disability; or
    - 2. The disabled individual's medical condition or requirements.
  - B. What work or tasks has the dog been trained to perform, provided an inquiry may not be made as to any special identification or training documentation for the dog, and the dog shall not be required to demonstrate its training or abilities.
- (3) The owner, operator, manager, or employees of a place of public accommodation are not required to provide care or food for the service animal.
- (c) No person shall aid, abet, or participate in the doing of any act declared to be an unlawful discriminatory practice under this section.
  - (d) Unless otherwise prohibited by law, nothing in this section shall be construed to prohibit any person from offering senior citizen price discounts or other privileges exclusively for the benefit of senior citizens.
  - (e) Nothing in this section shall prohibit a religious or denominational institution, organization, society or association or any nonprofit charitable or education organization that is operated, supervised, or controlled by or in connection with a religious organization from limiting its offerings of goods, services, facilities, and accommodations to persons of the same religion, or from giving preference to such persons, provided that such offerings mentioned above are not, in fact, offered for commercial purposes or supported by public funds.
  - (f) Whoever violates this section is guilty of unlawful discrimination in public accommodations.

#### **511.05 Complaint procedure.**

- (a) Filing of the complaint.
  - (1) An aggrieved individual, complainant, may file with the Westerville Clerk of Council a written complaint sworn under oath which alleges facts and circumstances, including the location, date(s), and time(s), of an unlawful discriminatory act(s) or practices, that such acts did or are occurring within the City limits, that the discrimination was directed at the complainant, and which identifies the person who committed or continues to commit the alleged unlawful discriminatory act(s) or practices.

- (2) Concurrent with the filing of the complaint, the complainant shall provide to the Clerk of Council in writing the complainant's mailing address, telephone number, if any, and email address, if any.
  - (3) The complaint shall not be accepted by the Clerk of Council if any of the following apply:
    - A. The complaint is presented to the Clerk of Council more than 180 days following the most recent unlawful discriminatory act alleged in the complaint;
    - B. No incident location provided in the complaint is within the City of Westerville;
    - C. The investigation of the complaint is required to be conducted pursuant to the terms of a collective bargaining agreement to which the City is a party;
    - D. The complaint fails to include all the information required by (a)(1) of this section;
    - E. The complainant fails to concurrently provide a writing that includes the information required in (a)(2) of this section.
  - (4) Upon receiving a complaint of an alleged unlawful discriminatory act, the Clerk of Council shall immediately date stamp the complaint and shall mail by certified or registered mail, return receipt requested, certified copies of the complaint to the Commission and the respondent.
  - (5) Upon receiving a complaint of an alleged unlawful discriminatory act, the Clerk of Council shall immediately deliver a copy of the complaint to the City Manager and the Law Director.
  - (6) The Clerk of Council shall retain the original date-stamped complaint and shall open and maintain a file on the matter during the pendency of any actions related to the complaint and for so long thereafter as is necessary to comply with the City's Records Retention Schedule.
- (b) Commission: contracted authority and initial actions.
- (1) The City shall contract with the Commission, and the City Manager is hereby authorized to enter into and perform such contract on behalf of the City upon such terms as the City Manager deems appropriate and are agreeable to the Commission. Based on the terms of the contract, the reasonable costs of using the Commission shall be calculated, and the Hearing Officer may impose such costs on the respondent, if the Hearing Officer conducts a hearing and finds the

respondent has or is committing acts or practices of unlawful discrimination, and the Hearing Officer deems the imposition of such costs appropriate.

- (2) If the Commission determines the most recent of the unlawful discriminatory acts alleged in the complaint occurred more than 180 days before the date the complaint was filed with the Clerk of Council or that none of the alleged acts occurred within the City of Westerville, the Commission shall have no authority to investigate or take further actions except to return the complaint to the Clerk of Council with written notice to the Clerk of Council and the Law Director that the complaint is outside of the authority granted to the Commission.
  - (3) Except as otherwise provided in this section, the Commission, acting as an administrative body of the City, shall be authorized to investigate, mediate, and make recommendations.
  - (4) If the Commission accepts the complaint, it shall follow such rules and procedures as the Commission deems appropriate, and at the conclusion of its process, the Commission shall issue a written recommendation to the Law Director with a copy to the Clerk of Council. The recommendation shall be to either:
    - A. Dismiss the complaint; or
    - B. Forward the complaint to a Hearing Officer.
  - (5) Within thirty days following the Law Director's receipt of the recommendation of the Commission, regardless of the specific recommendation, the Law Director shall either:
    - A. Seek to appoint a Hearing Officer who shall conduct an administrative hearing; or
    - B. Issue a Notice of Dismissal by ordinary United States Mail on the respondent and the complainant, with a copy to the Clerk of Council. The documents shall be deemed received and properly served upon the respondent and the complainant five days following the mailing thereof. The Notice of Dismissal may be appealed pursuant to the provisions of Chapter 2506 of the Ohio Revised Code.
- (c) Hearing Officer, final decision, remedies, and appeal.
- (1) If a Hearing Officer is appointed, the Hearing Officer shall have the authority to:
    - A. Conduct an administrative hearing;

- B. Provide to all the parties, witnesses, and the Law Director timely notice of the hearing date, time, and location;
  - C. Set, change as necessary, and timely communicate to the parties such reasonable procedural rules as the Hearing Officer shall deem appropriate;
  - D. Issue subpoenas and direct the exchange of discovery;
- (2) At the conclusion of the administrative hearing the Hearing Officer shall issue to the parties and the Law Director a final written decision to include findings of fact and conclusions of law:
- 1. If the Hearing Officer finds the respondent did engage in, or continues to engage in, an unlawful discriminatory act or practice under this chapter, and the Hearing Officer, in the Hearing Officer's sole discretion, deems it appropriate, the Hearing Officer's final written decision may include the issuance to the respondent of orders to cease and desist and the imposition upon the respondent of such other sanctions as are provided in this Chapter; or
  - 2. If the Hearing Officer, in the Hearing Officer's sole discretion, deems it appropriate, the Hearing Officer's final written decision may include the issuance of a Notice of Dismissal.
- (3) If the final decision of the Hearing Officer includes the issuance to the respondent of orders to cease and desist the unlawful discriminatory acts or practices, such orders to cease and desist shall specify a time period for the respondent's compliance.
- (4) The final decision of the Hearing Officer may include the imposition upon the respondent of reasonable costs of the Commission's process. The cost of the Hearing Officer's services shall not be assessed against the respondent. Attorney fees shall not be assessed against the respondent. Damages and other expenses incurred by the complainant or any other party shall not be assessed against the respondent.
- (5) The final decision of the Hearing Officer may include the imposition upon the respondent of a civil penalty payable to the City as follows:
- A. If division (5)(B) or (5)(C) of this section does not apply, a civil penalty in an amount not to exceed one thousand dollars (\$1,000);
  - B. If division (5)(C) of this section does not apply and if the respondent has been found by the Hearing Officer to have committed one violation of this chapter during the five-year period immediately preceding the date on

which a complaint was filed with the Clerk of Council, a civil penalty in an amount not to exceed two thousand five hundred dollars (\$2,500);

C. If the respondent has been found by the Hearing Officer to have committed two or more violations of this chapter during the five-year period immediately preceding the date on which a complaint was filed with the Clerk of Council, a civil penalty in an amount not to exceed five thousand dollars (\$5,000).

(6) The final decision of the Hearing Officer may not include any orders for reinstatement of employment, refund of monies paid, other mitigation of damages, or any other orders for corrections or sanctions, except as provided in this section.

(7) The final decision of the Hearing Officer may be appealed pursuant to the provisions of Chapter 2506 of the Ohio Revised Code.

(d) The final decision issued by the Hearing Officer shall be in a writing served by ordinary United States Mail on the respondent and the complainant. The documents shall be deemed received and properly served upon the respondent five days following the mailing thereof. Copies of the final decision shall also be sent to the Clerk of Council and the Law Director.

(e) City of Westerville as respondent.

(1) If the Hearing Officer finds a violation occurred, and the respondent is the City of Westerville or one of its boards, commissions, departments, divisions, officials, or employees, the Hearing Officer shall issue to the Westerville Clerk of Council a notice of violation, without any orders and without specifying any sanction, and the Hearing Officer shall take no further action.

(2) If the Hearing Officer issues a notice of violation on the Westerville Clerk of Council, at a reasonable time following receipt of the notice of violation, the Westerville City Council shall, at an open public meeting of City Council, take such actions and impose such remedies as City Council deems appropriate, including delegating such authority to the City Manager.

**511.06 Failure to comply with a Westerville subpoena.** No person shall fail to comply with a subpoena issued by the Hearing Officer. Whoever violates this section is guilty of failure to comply with a Westerville subpoena, a misdemeanor of the fourth degree.

**511.07 Failure to comply with an order of the Hearing Officer.** No person shall fail to comply with any portion of an order issued by the Hearing Officer within thirty days following service of the order or such period of time as the order provides, whichever is greater. Whoever violates this section is guilty of failure to comply with an order of the Hearing Officer, a misdemeanor of the first degree.

**511.08 Failure to pay financial sanctions imposed by the Hearing Officer.** If a civil penalty or costs or both are imposed by the Hearing Officer on the respondent, and any portion thereof remains unpaid thirty days following service of the order or following the expiration of the time period designated by the Hearing Officer, the City may institute civil enforcement proceedings against the respondent.”

**SECTION 2:** That this Ordinance shall take effect and be in force from and after the earliest date allowed by law.

PASSED: November 19, 2019



Michael Heyeck  
Chair of Council

APPROVED: 

Bruce E. Bailey  
Director of Law



Mary V. Johnston, MMC  
Clerk of Council