

AN ORDINANCE OF COUNCIL AMENDING, MODIFYING, AND RE-ENACTING SECTIONS 147.02 AND 147.08 OF THE CODIFIED ORDINANCES OF THE CITY OF HUNTINGTON FOR THE PURPOSE OF AMENDING ARTICLE 147 - HUMAN RELATION COMMISSION TO PROHIBIT DISCRIMINATION IN THE FORM OF CONVERSION THERAPY.

WHEREAS, the City of Huntington is committed to the concept of Affirmative Action/Equal Employment Opportunity; and

WHEREAS, many factors in our society have had the effect of barring minority group citizens, women and those who are disabled from employment opportunities equal to those enjoyed by other citizens; and

WHEREAS, it is the policy of the City of Huntington to eliminate discrimination wherever possible on the basis of race, religion, color, national origin, ancestry, sex or gender, sexual orientation, gender identity, age, blindness, disability, marital status, veteran status, or any other status protected by federal, state, or local laws,

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF HUNTINGTON, CABELL AND WAYNE COUNTIES, WEST VIRGINIA, that Sections 147.02 and 147.08 of the Article 147 of the Codified Ordinances of the City of Huntington, as revised, is hereby **AMENDED, MODIFIED AND RE-ENACTED** to read as follows:

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ARTICLE 147 – HUMAN RELATIONS COMMISSION
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147.02 - DEFINITIONS.

When used in this article:

- (a) "*Person*" means one or more individuals, partnerships, associations, organizations, corporations, labor organizations, cooperatives, legal representatives, trustees, trustees in bankruptcy, receivers and other organized groups of persons.
- (b) "*Commission*" means the Huntington Human Relations Commission.
- (c) "*Employer*" means any person employing 12 or more persons within the city and includes an

agent of such person, the State of West Virginia and its agencies. Provided, that such terms shall not be taken, understood or construed to include a private club, which, in fact, is not open to the public.

(d) "*Employee*" shall not include any individual employed by his parents, spouse or child, or in the domestic service of any person.

(e) "*Labor organization*" includes any organization, which exists for the purpose, in whole or in part, for collective bargaining or for dealing with employers concerning grievances, terms or conditions of employment, or for other mutual aid or protection in relation to employment.

(f) "*Employment agency*" includes any person regularly undertaking with or without compensation to procure, recruit, refer or place employees. A newspaper engaged in the activity of advertising in the normal course of its business shall not be deemed to be an employment agency.

(g) "*Discriminate*" or "*discrimination*" means to exclude from, or fail or refuse to extend to, a person equal opportunities because of race, religion, color, national origin, ancestry, sex or gender, sexual orientation, age, blindness, disability, veteran status, or familial status and includes "to separate" or "segregate". Furthermore, for the purposes of this article, discrimination on the basis of sex, sexual orientation, or gender identity includes the practice of conversion therapy with a minor under the age of 18 years old by any medical or mental health professional.

(h) "*Unlawful discriminatory practices*" includes only those practices specified in section 147.08.

(i) "*Place of public accommodations*" means any establishment or person, as defined herein, excluding the city and any of its affiliated boards and commissions, or any political or civil subdivision thereof, which offers its services, goods, facilities or accommodations to the general public, but does not include any accommodations which are in their nature private.

(j) "*Housing accommodations*" means any building or portion thereof which is used or intended for use as the residence or sleeping place of one or more persons. Nothing contained in this definition or this article shall apply to the rental of a room or rooms in a rooming house occupied by the owner as a place of residence and containing no more than four rented rooms, or rooms to be rented.

(k) "*Real property*" includes real estate, lands, leaseholds, commercial or industrial buildings and any vacant land offered for sale or rent on which the construction of a housing accommodation,

commercial or industrial building is intended, and any land operated as a trailer camp or rented or leased for the use, parking or storage of mobile homes or house trailers.

(l) "*Real estate broker*" includes any person, firm or corporation who, for a fee, commission or other valuable consideration, or by reason of a promise or reasonable expectation thereof, lists for sale, sells, exchanges, buys or rents, or offers or attempts to negotiate a sale, exchange, purchase or rental of real estate or an interest therein, or collects or offers or attempts to collect rent for the use of real estate or solicits for a prospective purchaser, or assists or desists in the procuring of prospects or the negotiation or closing of any transaction which does or is contemplated to result in the sale, exchange, leasing, renting or auctioning of any real estate, or negotiates, offers or attempts or agrees to negotiate a loan secured or to be secured by mortgage or other encumbrance upon transfer of any real estate for others, or any person who, for pecuniary gain or expectation of pecuniary gain, conducts a public or private competitive sale of lands or any interest in lands. In the sale of lots, the term "real estate broker" also includes any person, partnership, association or corporation employed by or on behalf of the owner or owners of lots or other parcels of real estate at a stated salary, or upon a commission, or upon a salary and commission, or otherwise, to sell such real estate, or any parts thereof, in lots or other parcels, and who shall sell or exchange, or offer or attempt or agree to negotiate the sale or exchange of any such lot or parcel of real estate. A newspaper engaged in the activity of advertising in the normal course of its business shall not be deemed to be a real estate broker.

(m) "*Real estate salesman*" includes any person who, for compensation, valuable consideration or commission, or other thing of value, or by reason of a promise or reasonable expectation thereof, is employed by and operates under the supervision of a real estate broker to sell, buy or offer to buy or negotiate the purchase, sale or exchange of real estate, offers or attempts to negotiate a loan secured or to be secured by a mortgage or other encumbrance upon or transfer of real estate for others, or to collect rents for the use of real estate, or to solicit for prospective purchasers or lessees of real estate, or who is employed by a licensed real estate broker to sell or offer to sell lots or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission, or

otherwise, to sell real estate, or any parts thereof, in lots or other parcels.

(n) "*Purchaser*" includes any occupant, prospective occupant, lessee, prospective lessee, renter, prospective renter, buyer or prospective buyer.

(o) "*Owner*" shall include the owner, lessee, sublessee, assignee, manager, agents or other person having the right to sell, rent or lease any housing accommodation or real property within the city or any agent of any of these.

(p) "*Age*" means 40 or above.

(q) "*Sexual orientation*" means actual or perceived heterosexuality, homosexuality, bisexuality, transgender or gender-related identity, appearance, or behavior of an individual, with or without regard to the individual's assigned sex at birth.

(r) "*Rooming house*" means a house or building where there are one or more bedrooms which the proprietor can spare for the purpose of giving lodgings to such persons as he chooses to receive.

(s) For the purpose of this article, a person shall be considered to be blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his visual acuity is greater than 20/200 but is occasioned by a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(t) "*Disability*" means a person who:

(1) Has a mental or physical impairment which substantially limits one or more of such person's major life activities; "major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working;

(2) Has a record of such impairment; or

(3) Is regarded as having such an impairment.

For the purposes of this article "disability" does not include persons whose current use of or addiction to alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reasons of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.

(u) "*Veteran status*" means a person who has served in the active military, naval or air service, and

was discharged or released under conditions other than dishonorable.

(v) "*Familial status*" means one or more individuals (who have not attained the age of 18 years) being domiciled with:

- (1) A parent or another person having legal custody of such individual or individuals; or
- (2) The designee of such parent or other person having such custody, with the written permission of such parent or other person. The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years. Nothing in this definition restricts advertisements of dwellings which are intended and operated for occupancy by older persons and which constitute housing for older persons.

(w) "*Protective hairstyles*" are those hairstyles necessitated by, or resulting from, the immutable characteristics of a hair texture associated with race, such as braids, locks, afros, curls, and twists.

(x) "*Race*" includes immutable traits associated with race, including hair texture and protective hairstyles.

(y) "*Conversion therapy*" means any practices or treatments that seek to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender. Conversion therapy shall not include counseling that provides assistance to a person undergoing gender transition, or counseling that provides acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development, including sexual-orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such counseling does not seek to change an individual's sexual orientation or gender identity.

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147.08 - UNLAWFUL DISCRIMINATORY PRACTICES.

It shall be an unlawful discriminatory practice, unless based upon a bona-fide occupational qualification:

(a) For any employer to discriminate against an individual with respect to compensation, hire, tenure, terms, conditions or privileges of employment on the basis of race, religion, color, national origin, ancestry, sex, sexual orientation, age, blindness, disability, or veteran status. Provided, that it shall not be unlawful discriminatory practice for an employer to observe the provisions of any bona-fide pension, retirement, group or employee insurance, or welfare benefit plan or system not adopted as a subterfuge to evade the provisions of this subsection (a).

(b) For any employer, employment agency or labor organization, prior to the employment or admission to membership, to:

(1) Elicit any information or make or keep a record of or use any form of application or application blank containing questions or entries concerning the race, religion, color, national origin, ancestry, sex, sexual orientation, age, blindness, disability, or veteran status of any applicant for employment or membership, except for such forms which shall be kept separate from the application blanks for the administration of any bona-fide affirmative action plan that is in accordance with state and federal laws and regulations;

(2) Print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specification or discrimination based upon race, religion, color, national origin, ancestry, sex, sexual orientation, age, blindness, disability, or veteran status; or

(3) Deny or limit, through a quota system, employment or membership because of race, religion, color, national origin, ancestry, sex, sexual orientation, age, blindness, disability, or veteran status.

(c) For any labor organization because of race, religion, color, national origin, ancestry, sex, sexual orientation, age, blindness, disability, or veteran status of any individual to deny full and equal membership rights to any individual or otherwise to discriminate against such individuals with

respect to hire, tenure, terms, conditions or privileges of employment or any other matter, directly or indirectly, related to employment.

(d) For an employer, labor organization, employment agency or any joint labor-management committee controlling apprentice training programs to:

(1) Select individuals for an apprentice training program on any basis other than their qualifications as determined by objective criteria which permit review;

(2) Discriminate against any individual with respect to his right to be admitted to or participate in a guidance program, an apprenticeship training program, on-the-job training program, or other occupational training or retraining program;

(3) Discriminate against any individual in his pursuit of such programs or to discriminate against such a person in the terms, conditions or privileges of such programs;

(4) Print or circulate or cause to be printed or circulated any statement, advertisement or publication; or to use any form of application for such programs; or to make any inquiry in connection with such program which expresses, directly or indirectly, discrimination or any intent to discriminate, unless based upon a bona-fide occupational qualification.

(e) For any employment agency to fail or refuse to classify properly, refer for employment, or otherwise to discriminate against any individual because of his race, religion, color, national origin, ancestry, sex, sexual orientation, age, blindness, disability, or veteran status.

(f) For any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodations, to:

(1) Refuse, withhold from or deny to any individual because of his race, religion, color, national origin, ancestry, sex, sexual orientation, age, blindness, disability, or veteran status either directly or indirectly, any of the accommodations, advantages, facilities, privileges or services of such place of public accommodations;

(2) Publish, circulate, issue, display, post or mail, either directly or indirectly, any written or printed communication, notice or advertisement to the effect that any of the accommodations, advantages, facilities, privileges or services of such place shall be refused.

withheld from or denied to any individual on account of race, religion, color, national origin, ancestry, sex sexual orientation, age, blindness, disability, or veteran status or that the patronage or custom thereat of any individual, belonging to or purporting to be of any particular race, religion, color, national origin, ancestry, sex, sexual orientation, veteran status, or age or who is blind or disabled is unwelcome, objectionable, not acceptable, undesired or not solicited.

(g) For any person, employer, employment agency, labor organization, owner, real estate broker, real estate salesman or financial institution to:

(1) Engage in any form of threats or reprisal, or to engage in, or hire, or conspire with others to commit acts or activities of any nature, the purpose of which is to harass, degrade, embarrass or cause physical harm or economic loss, or to aid, abet, incite, compel or coerce any person to engage in any of the unlawful discriminatory practices defined in this section.

(2) Willfully obstruct or prevent any person from complying with the provisions of this article, or to resist, prevent, impede or interfere with the commission or any of its members or representatives in the performance of duty under this article.

(3) Engage in any form of reprisal or otherwise discriminate against any person who has opposed any practices or acts forbidden under this article or because he has filed a complaint, testified or assisted in any proceeding under this article.

(h) For any medical or mental health professional to engage in conversion therapy with a minor within the city; provided, however, that this prohibition does not apply to parents or legal guardians, a clergy member or religious counselor who is acting in a pastoral or religious capacity and not in the capacity of a medical or mental health professional. Notwithstanding anything to the contrary set forth within this Ordinance, nothing in this Ordinance shall be construed to violate the rights of freedom of speech or religion guaranteed by the First Amendment to the United States Constitution or Article III, Section 7 and 15 of the West Virginia Constitution.

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BE IT FURTHER ORDAINED that all other sections and sub-sections of Article 147 of the Codified Ordinances of the City of Huntington, as revised, shall remain in full force and effect until further Ordinance of this Council.

BE IT FURTHER ORDAINED that Sections 147.02 and 147.08 of the Codified Ordinances of the City of Huntington, as revised, shall become effective upon its adoption by Council and approval by the Mayor.

SPONSORED BY _____

APPROVED AS TO FORM BY SD _____

FIRST READING _____

SECOND READING _____

DATE _____

BARBARA MILLER, CITY CLERK

DATE _____

STEVE WILLIAMS, MAYOR

APPROVE

DATE _____

VETO