

A RESOLUTION TO ENACT AN ORDINANCE PROHIBITING DISCRIMINATION IN
PUBLIC ACCOMMODATIONS AND EMPLOYMENT

WHEREAS, Wake County welcomes all people and recognizes the importance of diversity and the importance of all people being free from discrimination based on race, natural hair or hairstyles, ethnicity, creed, color, sex, marital or familial status, sexual orientation, gender identity or expression, national origin or ancestry, marital or familial status, pregnancy, National Guard or veteran status, religious belief or non-belief, age, or disability; and

WHEREAS, Wake County desires to safeguard the rights and opportunities of all persons to be free from discrimination in public accommodations and employment; and

WHEREAS, on March 30, 2017, Section 3 of S.L. 2017-4 went in effect, preempting local governments from enacting and amending ordinances regulating public accommodations and private employment practices; and

WHEREAS, Section 3 of S.L. 2017-4 expired on December 1, 2020; and

WHEREAS, invidious discrimination and the tolerance of invidious discrimination is detrimental to the health, safety, and welfare of the citizens of Wake County and the peace and dignity which Wake County seeks to promote for all of its residents; and

WHEREAS, pursuant to North Carolina General Statute § 153A-121(a), “[a] county may by ordinance define, prohibit, regulate, or abate acts, omissions, or conditions detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the county; and

WHEREAS, pursuant to North Carolina General Statute § 153A-4, “[i]t is the policy of the General Assembly that the counties of this State should have adequate authority to exercise the powers, rights, duties, functions, privileges, and immunities conferred upon them by law. To this end, the provisions of this Chapter . . . shall be broadly construed and grants of power shall be construed to include any powers that are reasonably expedient to the exercise of the power”; and

WHEREAS, the purpose and intent in enacting this Ordinance is to promote the principles of diversity, inclusion, harmony, and equal treatment for all and thereby the health, safety, and welfare of those who live in, work in, and visit Wake County as well as to promote the peace and dignity of Wake County; and

WHEREAS, the Wake County Board of Commissioners hereby finds and determines that it is in the best interest of the citizens and residents of Wake County to enact this Ordinance.

NOW, THEREFORE, BE IT ORDAINED AND RESOLVED by the Board of Commissioners (the “Board”) for the County of Wake, North Carolina (the “County”) as follows:

The foregoing ordinance is hereby added to Title III ADMINISTRATION of the Wake County Code of Ordinances:

Chapter 34. AN ORDINANCE PROHIBITING DISCRIMINATION IN PUBLIC ACCOMMODATIONS AND EMPLOYMENT

§ 34.01 DEFINITIONS

For the purpose of this subchapter, the following definitions shall apply:

Conciliation means attempted resolution of issues raised by a complainant through informal means not involving court process.

Discrimination means any difference in treatment based on a Protected Class as defined herein.

Employer means any person employing one or more persons within the Wake County and any person acting in the interest of an employer, directly or indirectly, including an employment agency. "Employer" shall include Wake County and any Wake County Contractor.

Gender identity or expression means having or being perceived as having gender-related identity, expression, appearance, or behavior, whether or not that identity, expression, appearance, or behavior is different from that traditionally associated with the sex assigned to that individual at birth.

Person means a natural person, a corporation, company, partnership, firm, association or other entity with a separate legal existence.

Protected class means race, natural hair or hairstyles, ethnicity, creed, color, sex, pregnancy, marital or familial status, sexual orientation, gender identity or expression, national origin or ancestry, National Guard or veteran status, religious belief or non-belief, age, or disability.

Protected hairstyle means any hairstyle, hair type, or hair texture historically associated with race such as, but not limited to, braids, locks, twists, tight coils or curls, cornrows, Bantu knots, and afros.

Public accommodation means any place, facility, store or other establishment which supplies accommodations, goods, or services to the public or which solicits or accepts the patronage or trade of the general public. A public accommodation shall not include a Religious Organization and all of the activities of the Religious Organization, or a non-profit fraternal or social organization which restricts use of facilities and services to members and their guests.

Religious Organization means a church, mosque, synagogue, temple, non-denominational ministry, faith-based mission or faith-based entity that is primarily devoted to the study, practice, or advancement of religion.

§ 34.02 PUBLIC ACCOMMODATIONS

It shall be unlawful for any owner, proprietor, employer, employee, agent, keeper, or manager in a place of public accommodation to deny any person the full and equal enjoyment of the accommodations, advantages, facilities, or privileges thereof because of that person's inclusion within one or more Protected Class.

§ 34.03 EMPLOYMENT AND CONTRACTING

A. It shall be unlawful for any employer, because of the Protected Class of any person, to fail or refuse to hire, discharge, or otherwise discriminate against that person with respect to tenure, promotion, transfer, compensation, terms, conditions or privileges of employment, or any other matter directly or indirectly related to employment.

B. As a condition of submitting a bid or proposal to Wake County, the bidder or proposer shall submit a certification of compliance with this Ordinance. Failure to submit this certification or falsification of this certification shall be grounds for rejection of the bid or termination of the contract without fault to Wake County.

C. An unlawful employment practice is established when the complaining party demonstrates by clear, cogent and convincing evidence that a personal characteristic or the status of the complaining party as a member of a Protected Class was a motivating factor for the employment practice. An employment practice shall not be considered unlawful if it is based upon a neutral classification, job related for the position in question and consistent with business necessity or an exception recognized by Title VII of the Civil Rights Act of 1964.

§ 34.04. INCLUSIVE INTERPRETATION OF SEX AND RACE DISCRIMINATION

A. Wake County interprets all legal prohibitions on sex discrimination to include discrimination on the basis of sexual orientation, gender identity, and gender expression.

B. Wake County interprets all legal prohibitions on race discrimination to include discrimination on the basis of protected hairstyles.

§ 34.05. PENALTIES AND ENFORCEMENT

A. Complaints regarding alleged violations of this ordinance should be filed with the County Manager's Office within ninety (90) days of the alleged discriminatory act on the complaint form provided by the County. The County Manager shall determine if the complaint falls within the jurisdiction of the County, and if so, with the help of the County Attorney shall investigate the complaint and seek information from the respondent (party complained of). If a

complaint is factually validated, then the County will offer voluntary conciliation to resolve the dispute between the complainant and the respondent.

B. In addition to or in lieu of other remedies available by law, any person violating any provision of this Article may be subject to an enforcement action brought by the County under G.S. 153A-123(d) and (e) for an appropriate equitable remedy, including but not limited to a mandatory or prohibitory injunction commanding the defendant to correct the conduct prohibited under this Article.

C. This Article does not create and is not intended to create any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against Wake County, its agencies, departments or any other officers, elected officials, or employees or any other person or entity, including respondents.

D. This Article shall not limit the remedies available to any person under state or federal law.

E. Violation of this ordinance does not constitute a criminal offense in accordance with G.S.14-4.

§ 34.06. APPLICABILITY; COMPLIANCE WITH LAWS

A. Pursuant to N.C.G.S. 153A-122, this ordinance shall apply within the jurisdictional limits of Wake County and is not applicable within the territorial limits of a city or town, unless a municipal governing board opts in, provided there is agreement to enforcement procedures through an interlocal agreement.

B. Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any existing federal, state, or local law or either the federal or North Carolina constitutions, including but not limited to the Free Exercise Clause of the First Amendment.

§ 34.07. SEVERABILITY CLAUSE

In the event any portion of this Ordinance, or the application thereof to any person is declared or adjudged to be invalid or unconstitutional, then such declaration or adjudication shall not affect the remaining provisions of this Ordinance, or its application to other persons; and the Ordinance shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this Ordinance.

§ 34.08. EFFECTIVE DATE; EXPIRATION DATE

This ordinance shall take effect on February 1, 2022.

The County Clerk is hereby authorized to make any needed formatting revisions, so long as such revisions do not change the content of the Ordinance, and to file this Ordinance in an appropriately indexed ordinance book subject to public inspection in the Clerk's office.

The County Finance Director and County Attorney are hereby instructed to incorporate the provisions of this Ordinance into County contracts and procurement documents where applicable.

Upon motion of Commissioner _____, seconded by Commissioner _____, the foregoing resolution entitled A RESOLUTION ENACTING AN ORDINANCE PROHIBITING DISCRIMINATION IN PUBLIC ACCOMMODATIONS AND EMPLOYMENT was passed by the following vote:

Ayes: _____

Noes: _____

* * * * *

I, _____, _____ Clerk to the Board of Commissioners for the County of Wake, North Carolina, DO HEREBY CERTIFY that the foregoing is a true copy of so much of the proceedings of said Board for said County at a regular meeting held on _____ as it relates to the passage of a new ordinance for Wake County PROHIBITING DISCRIMINATION IN PUBLIC ACCOMMODATIONS, AND EMPLOYMENT and that said proceedings are recorded in the minutes of said Board for said County.

I DO HEREBY FURTHER CERTIFY that proper notice of such regular meeting was given as required by North Carolina law.

WITNESS my hand and official seal of said County this _____ day of _____, 2021.

Clerk to the Board

[SEAL]