

To all readers: (October 26, 2018)

This is a draft. It may change before being introduced to the Lewisburg Borough council and its committees. This document is written by Borough Council members, but it is NOT Borough policy. That is what is under consideration.

The actual ordinance language only includes what starts on the next page with “An ordinance....”

Since initially discussed, several key changes have been made based on feedback from various stakeholders including religious leaders, borough council members, business leaders, and advocates for the HRO.

These changes include, but are not limited to:

- 1) Change of name to Human Relations Ordinance. This mirrors the [relevant commonwealth law](#) which has the same name.
- 2) The local HRC is composed of five members and includes at least one business owner.
- 3) The addition of non-doctrine clause at 1.B
- 4) Religious exception that is meant to allow religions or other bona fide private organizations to operate as befits their religious or other principles and hence to be exempt from the employment, public accommodation, and housing regulations in this ordinance. This would not apply to such entities that are supported by tax dollars. This is standard around the commonwealth.
- 5) Mediation is the only response available to the local HRC.
- 6) The local HRC can dismiss complaints due to timeliness, jurisdiction, or for being frivolous.
- 7) The ordinance does NOT apply to rental of housing in one’s own primary residence.
- 8) The ordinance also protects anyone doing business in the borough from discrimination from other businesses or individuals.

Also, points to be aware of.

- Pennsylvania does not include specific protections of civil rights for sexual orientation, gender identity or expression, or genetic information.
- There are efforts to address this deficiency at the state level. However, there is no guarantee of when or if that will occur. Moreover, a local HRC can be a preferred resource to the state HRC.
- All people and businesses are already subject to the state HRA. Moreover, any individual could choose to bring a civil suit over alleged discrimination. That is the world we live in now regardless of this ordinance.

THIS IS A WORKING DOCUMENT. IT CAN CHANGE ONCE BOROUGH COUNCIL STARTS CONSIDERING IT.

AN ORDINANCE, “The Human Relations Ordinance” To Amend The Code Of The Borough Of Lewisburg, adding Chapter XX. Chapter XX will do the following: Prohibit Discrimination in Housing, Commercial Property, Employment and Public Accommodations Based Upon race, color, religious creed, ancestry, age, sex, national origin, sexual orientation, gender identity or expression, genetic information, handicap or disability, use of guide or support animals because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals; Provide For The Creation of Borough Of Lewisburg Human Relations Commission; Providing Definitions; Establishing a Complaint Procedure; and Encouraging Mediation.

The Borough Council of Lewisburg hereby ordains:

Section 1. The Code of the Borough of Lewisburg shall be amended by the addition of a new Chapter XX Human Relations Commission, to provide as follows:

Chapter XX

§ XX.1- Purpose and Declaration of Policy.

A: Purpose: In order to ensure that all persons, regardless of race, color, religious creed, ancestry, age, sex, national origin, sexual orientation, gender identity or expression, genetic information, handicap or disability, use of guide or support animals because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals, enjoy the full benefits of citizenship and are afforded equal opportunities for employment, housing, commercial property, and the use of public accommodations, it is necessary that appropriate legislation be enacted.

B: Neutral to doctrine or creed: Nothing in this chapter shall be construed as supporting or advocating any particular doctrine, position, point of view, lifestyle or religious view. This chapter intends that all persons be treated fairly and equally, and it is the express intent of this chapter to guarantee fair and equal treatment under the law to all people living, working, visiting, and otherwise interacting in ways relevant to the provisions of this chapter, namely, enjoy the full benefits of citizenship including equal opportunities for employment, housing, commercial property, and the use of public accommodations.

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C: Exercise of Police Power: This chapter shall be deemed an exercise of the police power Borough Of Lewisburg for the protection of the public welfare, prosperity, health and peace of The Borough of Lewisburg, its residents and the Borough of Lewisburg community.

D: No power or duty granted hereunder to the Borough of Lewisburg Human Relations Commission is intended to exceed nor shall it be construed as exceeding those powers and duties granted to the Pennsylvania Human Relations Commission by the Pennsylvania Human Relations Act, the Act of October 27, 1955, as amended.

§ XX.2 - Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this subsection. To the extent words and phrases appearing in this chapter are not expressly defined herein, their meaning for purposes of this chapter shall be the same as such words are defined in the Pennsylvania Human Relations Act and such words, if not therein defined, shall be construed consistently with the Pennsylvania Human Relations Act.

A: BOROUGH COUNCIL -- The duly elected members of the Lewisburg Borough Council

B: BOROUGH- The Borough of Lewisburg

C: DISCRIMINATION -- Any discriminatory act(s) taken by any person, employer, entity, employment agency, or labor organization, with respect to or involving a transaction related to employment, public accommodations, commercial property or housing accommodations, on the basis of a race, color, religious creed, ancestry, age, sex, national origin, sexual orientation, gender identity or expression, genetic information, handicap or disability, use of guide or support animals because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals.

D: DISCRIMINATORY ACTS -- All acts or actions defined in the Pennsylvania Human Relations Act as unlawful discriminatory practices as related to employment, public accommodations, publicly offered commercial property or housing accommodations, when those acts or actions are taken on the basis of a person's race, color, religious creed, ancestry, age, sex, national origin, handicap or disability, use of guide or support animals because of the blindness, deafness or physical handicap of the user, or because the user is a handler or trainer of support or guide animals or when those acts or actions are taken on the basis of a person's actual or perceived sexual orientation, gender identity or gender expression. This chapter automatically updates to reflect nay changes in the acts or actions defined in the Pennsylvania Human Relations Act as unlawful discriminatory practices.

For more information, please contact Jordi Comas at jordi@jordicomas.org

E: EMPLOYEE: (c) The term "employee" does not include (1) any individual employed in the domestic service of any person, (2) any individuals who, as a part of their employment, reside in the personal residence of the employer, (3) any individual employed by said individual's parents, spouse or child.

F: EMPLOYER -- The term "employer" includes the Borough, its departments, boards and commissions, and any other governmental agency or school district thereof and any person employing one or more persons within the Borough, but except as hereinafter provided, does not include religious fraternal, charitable or sectarian corporations or associations, except such corporations or associations supported, in whole or in part, by governmental appropriations.

G: GENDER EXPRESSION -- The manner in which a person's gender identity is communicated to others, through appearance, behavior, or physical characteristics that may be in accord with, or opposed to, one's physical anatomy, chromosomal sex, or sex at birth, and shall include, but is not limited to, persons who are undergoing or have completed sex change.

H: GENDER IDENTITY -- The gender(s), or lack thereof, a person self-identifies as, whether or not based on biological fact.

I: HOUSING ACCOMMODATIONS -- Includes (1) any building, structure, mobile home site or facility, or portion thereof, which is used or occupied or is intended, arranged or designed to be used or occupied as the home residence or sleeping place of one or more individuals, groups or families whether or not living independently of each other; and (2) any vacant land publicly offered for sale or lease for the purpose of constructing or locating thereon any such building, structure, mobile home site or facility. The term "Housing Accommodation" shall not include any personal residence offered for accommodation by the owner or lessee thereof or by his or her broker, salesperson, agent or employee.

J: PERSON -- One or more individuals, partnerships, associations, organizations, corporations, limited liability entities, legal representatives, trustees in bankruptcy or receivers, including by not limited to any owner, lessor, assignor, builder, manager, broker, salesman, agent, employee, independent contractor, lending institution and the Commonwealth of Pennsylvania, and all political subdivisions, authorities, boards and Commissions thereof.

K: PUBLIC ACCOMMODATION -- Any accommodation for the provision of food, beverages or lodging, resort or amusement which is open to, accepts or solicits the patronage of the general public, but shall not include any accommodations which are in their nature distinctly private. Examples of public accommodation include, but are not limited to restaurants, inns, taverns, businesses offering beauty or wellness services, clinics, pharmacies, retail stores, banks and other financial institutions, movie theaters, gymnasiums, public parks, and public libraries. The full list of public accommodations here shall be the same as the most current version of the PHRA. All

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offices, commissions, or other bodies of the government of the Borough are also covered by public accommodation.

L: SEXUAL ORIENTATION -- Actual or perceived homosexuality, heterosexuality and/or bisexuality.

XX.3 Unlawful Acts

Discrimination and discriminatory acts are as defined under the Pennsylvania Human Relations Act. Specifically:

- 1) Discrimination and discriminatory acts are prohibited in housing, publicly offered commercial property transactions, including, but not limited to refusing to sell, lease, finance or otherwise to deny or withhold any housing accommodation or commercial property.
- 2) For any employer because of the race, color, religious creed, ancestry, age, sex, national origin or non-job related handicap or disability or the use of a guide or support animal because of the blindness, deafness or physical handicap of any individual or independent contractor, to refuse to hire or employ or contract with, or to bar or to discharge from employment such individual or independent contractor, or to otherwise discriminate against such individual or independent contractor with respect to compensation, hire, tenure, terms, conditions or privileges of employment or contract, if the individual or independent contractor is the best able and most competent to perform the services required.

Employment non-discrimination is the same as in the PHRA and includes, but it not limited to eliciting or recording non-material information, advertising, quotas, or other efforts to limit the pool of applicants.

- 3) Discrimination in public accommodations is prohibited
4. Job Suitability and Performance. This section of the act shall not be construed to prohibit the refusal to hire or the dismissal of a person who is not able to function properly in the job applied for or engaged in.
5. No Retaliation. Retaliation against any individual because such individual has opposed any practice forbidden by this chapter, or because such individual has made a charge, testified or assisted in any manner in any investigation, proceeding or hearing under this chapter is prohibited under this chapter.
6. No compulsion to discriminate. Aiding, abetting, inciting, compelling or coercing the doing of any act declared by this chapter to be an unlawful practice, or obstructing or preventing any person from complying with the provisions of this chapter is prohibited under this chapter.

§ XX.4 – Religious Exception [MAY NEED REVISION TO COVER RELIGIONS AND OTHER BONA FIDE PRIVATE ORGANIZATIONS]

For more information, please contact Jordi Comas at jordi@jordicomas.org

A. Nothing in this ordinance shall bar any religious or denominational institution or organization or any charitable or educational organization which is operated, supervised or controlled by or in connection with any religious organization or any bona fide private or fraternal organization from giving preference to persons of the same religion or denomination or to members of such private or fraternal organization from making such selection as is calculated by such organization to promote the religious principles or the aims, purposes or fraternal principles for which it is established or maintained.

Nor shall it apply to rental of rooms in a landlord-occupied rooming house with a common entrance, nor with respect to discrimination based on sex, the advertising, the rental or leasing of housing accommodations in a single-sex dormitory or rooms in one's personal residence in which common living areas are shared. Notwithstanding any other provision of this chapter, any religious corporation, organization or association, to refuse to hire, employ, house or otherwise accommodate an individual on the basis of actual or perceived sexual orientation, gender identity or gender expression, or genetic information.

B. The full range of religious exceptions as they apply to housing, employment, and public accommodation as outlined in the PAHRC also apply.

§ XX.5 - Establishment of Human Relations Commission.

A. Pursuant to § XX.1 of the Pennsylvania Human Relations Act, there is hereby established a Human Relations Commission in and for the Borough of Lewisburg

B. Commission Composition. The Commission shall consist of 5 members who shall serve overlapping terms of three years each. All members of the Commission shall be appointed by the Borough Council once applications have been received and reviewed. Members shall be either residents or employers (or the duly assigned representative of an employer) of Lewisburg Borough. At least one member shall be an employer located within Lewisburg or the duly appointed representative of said employer. No member of the Commission shall hold any office in any political party. Members of the Commission shall serve without compensation with respect to any and all duties performed under this chapter but may be reimbursed reasonable expenses incurred in the performance of their duties, as approved by the Board of Commissioners.

C. Chair. One of the Commission's members shall be appointed by the members thereof as Chairperson. The chairperson shall be confirmed by a majority vote of the Borough Council. The Chairperson will be responsible for setting Commission meetings, coordinating with the Borough Manager regarding received complaints and answers, and generally ensuring that the duties of the Commission are fulfilled. The Chairperson may delegate responsibility for Commission duties to specific Commissioners.

D. The Commission shall have jurisdiction over unlawful practices (see above) committed within the Borough of Lewisburg.

E. The Borough Council hereby grants to the Commission, with respect to Unlawful Practices as defined herein, all of the powers necessary to the execution of its duties as set forth below.

F. The Commission shall be empowered to promulgate such additional procedures to those set forth herein as it determines to be necessary or desirable to implement the intent of this chapter subject to review and approval of the Borough Council.

§ XX.6 - Procedures

A. Filing a complaint.

(1) Any person(s) claiming to be aggrieved by an Unlawful Practice may make, sign and file a verified complaint alleging violations of this chapter, which shall include the following information:

(a) The name and address of the aggrieved person(s);

(b) The name and address of the person(s) alleged to have committed the unlawful practice;

(c) A concise statement of the facts, including pertinent dates, constituting the alleged Unlawful Practice;

(d) If applicable, the address and a description of any Housing Accommodation or commercial property which is involved; and

(e) Such other information as may be required by the Commission.

(f) The commission will establish a minimal filing fee paid by the complainant. It may waive this in cases of financial hardship according to its discretion.

(2) Complaints may be filed in person or by mail at the Borough Manager's office. All complaints must be received by the Borough Manager's office within 180 days of the alleged Unlawful Practice, or the complaint will not be considered timely.

(3) The Borough Manager or his or her designee shall record the date and time of receiving the complaint and shall immediately forward a complete copy to the Chairperson of the Commission.

B. Notification and answer.

(1) Within 30 days of its receipt of a complaint, the Human Relations Commission shall determine the validity of the complaint using three criteria: if the complaint is timely, if the commission has jurisdiction, and if the complaint is substantive and non-frivolous.

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If the Commission determines that any of the three criteria are not met, it shall dismiss the complaint and notify the aggrieved party.

If the Commission determines the three criteria to hear the complaint, it shall proceed as follows:

(a) Send a copy of the complaint to the person(s) charged with a Unlawful Practice (the "Respondent") and to the Pennsylvania Human Relations Commission; and

(b) Send a notice to the person(s) aggrieved (the "Complainant"), informing them that the complaint has been received. If the complaint alleges discrimination on a basis proscribed under state law, the notice shall advise the Complainant that the complaint is being cross-filed with the Pennsylvania Human Relations Commission.

(c) If the complaint alleges discrimination on a basis proscribed under federal law, the notice to the Complainant shall also inform of the right to file with the Federal Equal Employment Opportunity Commission.

(2) The Respondent shall file with the Borough Manager a written verified answer to the complaint within 30 days of Respondent's receipt of the complaint. It shall be conveyed by the Borough Manager to the Chairperson of the Commission within 10 days of its receipt by the Borough Manager. The Commission shall promptly send a copy of the Respondent's reply to the Complainant.

C. Mediation.

(1) After the Respondent's reply has been received, the Commission shall, within 15 days, invite the parties to voluntarily participate in the mediation of their dispute. The parties shall respond to the invitation to mediate within 15 days of being invited to mediate. Mediation shall be conducted in accordance with procedures promulgated by the Commission and approved by the Board of Commissioners.

(2) If mediation is elected by the parties, the parties may jointly select a mediator, in which case they shall be jointly responsible for all financial costs and expenses associated with mediation and may allocate the costs of mediation as they agree. If the parties do not jointly select a mediator, or agree to allocation of costs pursuant to approved procedures of the Commission, the Chairperson of the Commission shall select a mediator, who may be either a member of the Commission or a volunteer from the community.

(3) The parties shall notify the Commission as to whether the mediation successfully resolved the complaint. Mediation proceedings shall otherwise be confidential. Neither the results thereof nor any record made in connection therewith shall be made public unless agreed to in writing by both parties to the initial complaint.

(4) Dismissal of the Complaint Following Mediation.

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(a) If the mediation has successfully resolved the complaint, the Commission shall promptly notify the parties that it has dismissed the complaint.

(b) If the mediation has not successfully resolved the complaint, and if the complaint alleges a violation of this Ordinance which is also proscribed under the Pennsylvania Human Relations Act, the Commission shall notify the parties that the complaint has been dismissed, and refer the complaint to the Pennsylvania Human Relations Commission for further proceedings.

(b) If the mediation has not successfully resolved the complaint, the parties shall be advised of their right to proceed to the Court of Common Pleas Union County and/or to the Pennsylvania Human Relations Commission if appropriate.

§ XX.7 - Private Right of Action.

Nothing contained in this Chapter shall be deemed to limit the right of an aggrieved person to recover under any other applicable law or legal theory. However, the Lewisburg Human Relations Commission shall have no jurisdiction over matters which are the subject of pending or prior filings made by an aggrieved person before any state or federal court or agency of competent jurisdictions.

Section 2. Nothing in this Ordinance shall be construed to affect any suit or proceedings in any Court, any rights acquired or liability incurred, any permit issued, or any cause or causes of action existing under the Borough’s Code of Ordinances prior to the adoption of this amendment.

Section 3. The provisions of this Ordinance are severable, and if any section, sentence, clause, part, or provision thereof shall be held illegal, invalid, or unconstitutional by any Court of competent jurisdiction, such decision of this court shall not affect or impair the remaining sections, sentences, clauses, parts or provisions of this ordinance. It is hereby declared to be the intent of the Board that this ordinance would have been adopted if such illegal, invalid, or unconstitutional section, sentence, clause, part, or provision had not been included herein.

Section 4. This Ordinance shall take effect and be in force from and after its approval date as required by law.

ORDAINED AND ENACTED this _____ day of _____, 2018.

Secretary

President

APPROVED this _____ day of _____, 2018.

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Mayor