

**AN ORDINANCE AMENDING ARTICLE 153 GOVERNING
THE HUMAN RIGHTS COMMISSION
TO PROHIBIT CONVERSION THERAPY**

WHEREAS, West Virginia Code 8-12-2(a)(9) provides that the City of Morgantown has plenary power and authority to adopt an ordinance not inconsistent or in conflict with the West Virginia Constitution, state code, or city charter, that provides for the government, protection, order, conduct, safety and health of persons or property; and

WHEREAS, West Virginia Code 8-12-5(23) and (44) provides that the City of Morgantown's City Council has the plenary power and authority to adopt an ordinance that provides for the elimination of hazards to public health and safety and to abate or cause to be abated anything which is declared a public nuisance and to protect and promote the public safety, health, welfare and good order; and

WHEREAS, contemporary science recognizes that being lesbian, gay, bisexual, or transgender is part of the natural spectrum of human identity and is not a disease, disorder, or illness; and

WHEREAS, conversion therapy has been rejected by every major medical and mental health organization, including the American Psychological Association, American Psychiatric Association, American Medical Association, American Academy of Pediatrics, American Academy of Child and Adolescent Psychiatry, American Counseling Association, American Psychoanalytic Association, American School Counselor Association, American School Health Association, National Association of Social Workers, and the Pan American Health Organization; and

WHEREAS, conversion therapy leads to critical health risks including anxiety, depression, decreased self-esteem, substance abuse, homelessness, and suicide; and

WHEREAS, minors are especially vulnerable to the harms associated with conversion therapy; and

WHEREAS, the City has a compelling interest in protecting the physical and psychological well-being of minors, including lesbian, gay, bisexual, and transgender youth, and in protecting its minors against exposure to serious harms caused by conversion therapy; and

WHEREAS, in consideration of the foregoing, the City Council finds and concludes that the practice of conversion therapy impermissibility discriminates against lesbian, gay, bisexual, and transgender youth on the basis of sex, sexual orientation, and/or gender identity;

NOW, THEREFORE, the City of Morgantown hereby ordains that Section 153.02 of the City Code is amended as follows:

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, age, blindness, disability, sexual orientation, gender identity, familial status or veteran status and includes to separate or segregate. For the purposes of this article, discrimination based on race includes, but is not limited to, discrimination based on hair textures and protective hairstyles historically associated with a particular race. 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 eighteen years old by any medical or mental health professional.

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.

Medical or mental health professional means any individual who is licensed by the City or State to engage in a profession related to physical or mental health, including any interns, trainees, or apprentices who provide medical or mental health services under the supervision of a licensed medical or mental health professional.

This ordinance is effective upon adoption.

October 5, 2021

FIRST READING

October 19, 2021

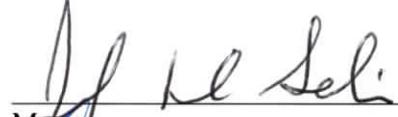
SECOND READING

October 19, 2021

ADOPTED

October 19, 2021

FILED



Mayor



City Clerk

Morgantown City Council Packet – October 5, 2021
Form of Article 153 with proposed amendments prohibiting Conversion Therapy

PART ONE - ADMINISTRATIVE CODE
CHAPTER SEVEN - BOARDS AND COMMISSIONS
ARTICLE 153. HUMAN RIGHTS

ARTICLE 153. HUMAN RIGHTS¹

Sec. 153.01. Declaration of policy.

- (a) In order to build an inclusive community, the City will dedicate deliberate and continuous attention to the human relations and human rights of its residents and visitors.
- (b) It is the public policy of the City to provide all of its residents and visitors equal opportunity for participation in local governance, employment, equal access to places of public accommodations and equal opportunity in the sale, purchase, lease, rental and financing of housing accommodations or real property. Equal opportunity in the areas of employment, public accommodations, housing accommodations or real property is hereby declared to be a human right or civil right of all persons without regard to race, religion, color, national origin, ancestry, sex, age, blindness, disability, sexual orientation, gender identity, familial status, or veteran status.
- (c) The denial of these rights to properly qualified persons by reason of race, religion, color, national origin, ancestry, sex, age, blindness, disability, sexual orientation, gender identity, familial status, or veteran status is contrary to the principles of freedom and equality of opportunity and is destructive to a free and democratic society.
- (d) This City policy is based on the recognition and vision that the diversity found in our city brings forth richness in our community, a greater understanding of our world, a multitude of talent to benefit collective needs, and an opportunity for enhanced living and learning for all. Inherent in this policy is a commitment to encourage and endeavor to bring about equal opportunity, mutual understanding, and respect for persons of all ages, abilities, ancestry, blindness, color, disability or handicap, ethnicities, familial status, veteran status, national origins, sex, sexual orientations, gender identities, races, religion and other backgrounds or orientations.
- (e) It is the purpose and intent of the Morgantown City Council to protect and safeguard the right and opportunity of all persons to be free from all forms of discrimination, including discrimination based on actual or perceived race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, age, blindness, disability, familial status or veteran status. The Council's purpose in enacting the ordinance from which this chapter is derived is to promote the public health and welfare of all persons who live and work in the City of Morgantown. In its efforts to build an inclusive City, it is important for the City to ensure that all persons within the City have equal access to employment, housing and public accommodations.

(Ord. No. 17-40, 10-17-2017)

¹State law reference(s)—Authority to prohibit housing discrimination—see W.Va. Code 8-12-9; State Human Rights Commission—see W.Va. Code Art. 5-11; local human relation commission—see W.Va. Code 5-11-1.

Sec. 153.02. Definitions.

When used in this article:

Age means the age of 40 or above.

City means the City of Morgantown, West Virginia.

Commission means the Human Rights Commission of the City of Morgantown, West Virginia.

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.

Disability means:

- (1) A mental or physical impairment which substantially limits one or more of a person's major life activities. The term "major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working;
- (2) A record of such impairment; or
- (3) Being regarded as having such an impairment.

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, age, blindness, disability, sexual orientation, gender identity, familial status or veteran status and includes to separate or segregate. For the purposes of this article, discrimination based on race includes, but is not limited to, discrimination based on hair textures and protective hairstyles historically associated with a particular race. 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 eighteen years old by any medical or mental health professional.

Employee shall not include any individual employed by his or her parents, spouse or child.

Employer means any person employing 12 or more persons within the City for 20 or more calendar weeks in the calendar year in which the act of discrimination allegedly took place or the preceding calendar year. Provided, that such term shall not be taken, understood or construed to include a bona fide private membership club as defined by Title 42, United States Code Section 2000e(e).

Employment agency includes any person 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.

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 also apply to any person with care and legal custody of such individual, any person who is pregnant, or any person who 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 or operated for occupancy by older persons and which constitute housing for older persons as defined by Title 42, United States Code, Section 3607(b)(2).

Gender identity means the actual or perceived gender-related identity, expression, appearance, or mannerisms, or other gender-related characteristics of an individual, regardless of the individual's designated sex at birth.

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.

Inclusive city and inclusive community as used in this article, shall mean the same thing, e.g., a city that helps people thrive by: Supporting hospitality; welcoming diversity; promoting civility; promoting safe, affordable dwellings; enabling participation in community, services, and local government; supporting fairness in access to opportunities and services; reducing violence; supporting social justice; encouraging awareness and understanding of opportunities/limitations; making residents aware of the West Virginia Human Rights Commission; and working for a more sustainable community for present and future citizens.

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

Medical or mental health professional means any individual who is licensed by the City or State to engage in a profession related to physical or mental health, including any interns, trainees, or apprentices who provide medical or mental health services under the supervision of a licensed medical or mental health professional.

Owner means the owner, lessee, sub-lessee, assignee, manager, agent or other person having the right to sell, rent, lease or transfer any housing accommodation or real property within the City or any agent of any of such persons.

Place of public accommodations means any establishment or person, as defined herein, including the City, which offers its services, goods, facilities or accommodations to the general public or which is supported directly or indirectly by government funds, but shall not include any accommodations which are in their nature private and which are not in fact open to the public.

Protective hairstyles means hairstyles historically associated with a particular race and includes, but is not limited to, hairstyles such as braids, locks, and twists.

Purchaser means any occupant, prospective occupant, lessee, prospective lessee, renter, prospective renter, buyer or prospective buyer.

Race means a social construct grouping humans based on shared physical or social qualities into categories generally viewed as distinct, including but not limited to, hair texture and protective hairstyles.

Real estate broker means 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 land. 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.

Real estate salesman means 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 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 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.

Real property means real estate, lands, leaseholds, commercial or industrial buildings, and any vacant land offered for sale or for 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.

Sexual orientation means actual or perceived homosexuality, heterosexuality, or bisexuality.

Veteran status means a person who has served in active military, naval or air service, and who was discharged or released under conditions other than dishonorable.

(Ord. No. 17-40, 10-17-2017; Ord. No. 2021-07 , 4-20-2021)

Sec. 153.03. Unlawful discriminatory practices.

It shall be an unlawful discriminatory practice, unless based upon a bona fide occupational qualifications, or except where based upon lawful and acceptable security regulations established by the United States or the State of West Virginia or its agencies or political subdivisions:

- (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, age, blindness, disability, veteran status, sexual orientation or gender identity. Provided, that it shall not be an unlawful discriminatory practice of 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.
- (b) For any employer, employment agency, or labor organization, prior to 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, disability, sex, blindness, age, veteran status, sexual orientation, or gender identity 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, or for the purpose of complying with any State or federal statute, or rule or regulation issued by any agency or the State or federal government, or for the purpose of making reports required by agencies of the State or Federal government;
 - (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, disability, sex, blindness, age, veteran status, sexual orientation or gender identity; or

- (3) Deny or limit, through a quota system, employment or membership because of race, religion, color, national origin, ancestry, disability, sex, blindness, age, veteran status, sexual orientation or gender identity.
- (c) For any labor organization because of race, religion, color, national origin, ancestry, disability, sex, blindness, age, veteran status, sexual orientation, or gender identity 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 employee, labor organization, employment agency, or any joint labor-management committee controlling apprentice training program 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 retaining 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; or
 - (4) Print or circulate or cause to be printed or circulated any statement, advertisement or publication; or to use any form of application of 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, disability, sex, blindness, age, veteran status, sexual orientation or gender identity.
- (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, disability, sex, blindness, age, veteran status, sexual orientation or gender identity, either directly or indirectly, any of the accommodations, advantages, facilities, privileges or services of such place of public accommodations; or
 - (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, disability, sex, blindness, age, veteran status, sexual orientation, or gender identity or that the patronage or custom thereof of any individual belonging to or purporting to be of any particular race, religion, color, national origin, ancestry, sex, age, veteran status, sexual orientation, or gender identity 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 a duty under this article; or
 - (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 the person has filed a complaint, testified or assisted in any proceeding under this article.
- (h) For any person to coerce, threaten, discharge, expel, blacklist or otherwise retaliate against another person for opposing any practices prohibited by this article, making a complaint under this article, or assisting in an investigation or proceeding regarding an alleged violation of this article.
 - (i) For any person to discriminate against another person based on the classifications identified in this article even if such discrimination is not specifically identified within this section.

(Ord. No. 17-40, 10-17-2017)

Sec. 153.04. City Human Rights Commission established.

There is hereby established in the City a Human Rights Commission.

(Ord. No. 17-40, 10-17-2017)

Sec. 153.05. Composition and membership.

The Human Rights Commission shall consist of seven members to be appointed by City Council. The members shall be residents of and in the City. The Commission may appoint, with the approval of City Council, ex-officio members who shall have the privilege of participation without the right to vote.

Commissioners shall serve for two-year terms beginning with the first meeting after the beginning of the municipal fiscal year. Four of the first seven members shall be appointed to serve terms of two years, while three shall be appointed to serve terms of one year. Thereafter, terms of office for all commissioners will be staggered with two-year terms. Members may be reappointed to subsequent two-year terms.

(Ord. No. 17-40, 10-17-2017)

Sec. 153.06. Officers.

- (a) *Officers.* The officers of the Human Rights Commission shall be a Chairperson, Vice Chairperson, and Secretary. The Chairperson shall serve as the liaison to the City administration.
- (b) *Appropriation of funds.* City Council may appropriate any funds that it deems necessary to carry out any of the proposals set forth by the Human Rights Commission. The Commission, with the approval of Council, may apply for State and federal financial aid in grants or other forms of financial assistance through the City Administration to assist in carrying out any approved plans or projects.
- (c) *Fiscal responsibilities.* The Human Rights Commission shall not have the authority to maintain any independent banking or other financial account. Any such account, if requested, shall be maintained by the City Manager.

(Ord. No. 17-40, 10-17-2017)

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Sec. 153.07. Meetings, bylaws and rules.

The Human Rights Commission shall meet as often as is deemed necessary by its members, upon call of the chairman. The Commission shall adopt its own bylaws and rules, which shall not be inconsistent with the provisions of this Code.

(Ord. No. 17-40, 10-17-2017)

Sec. 153.08. Commission status and objectives.

The Commission shall encourage and endeavor to bring about mutual understanding and respect among all racial, religious and ethnic groups within the City; and shall strive to eliminate all discrimination in employment and places of public accommodations, and in the sale, purchase, lease, rental or financing of housing and other real property, by virtue of actual or perceived race, religion, color, national origin, ancestry, sex, age, blindness, sexual orientation, disability, gender identity, familial status, or veteran status.

In addition, the purpose of the Commission shall be to:

- (a) Work to make Morgantown an inclusive city.
- (b) Collaborate with the National League of Cities, West Virginia University, Monongalia County Commission and other partners as appropriate to encourage leadership in helping attain inclusivity in the City and its larger community.
- (c) Assess needs and identify barriers towards becoming a more inclusive community. Establish goals and objectives for sustaining welcoming environments, enhancing global awareness, and promoting optimum opportunities for supporting safe housing and thriving people.
- (d) Support as well as plan, publicize, implement, and evaluate programs, services and activities which promote appreciation for all peoples and the personal worth of every individual.
- (e) Enlist the cooperation of civic, community, corporate, educational, ethnic, health care, labor, racial, religious, social justice or other identifiable groups of the City in programs and services devoted to the advancement of tolerance, communication and understanding, and equal protection of the laws of all groups and people.
- (f) Enforce the provisions of this article of the City Code prohibiting discrimination in employment, housing, and public accommodations on account of actual or perceived race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, age, disability, familial status or veteran status.

(Ord. No. 17-40, 10-17-2017)

Sec. 153.09. Powers; functions; services.

The Commission has the right and duty to communicate with City Council and to present to Council any issues that it has investigated pursuant to this article.

The Commission is hereby authorized and empowered:

- (a) To cooperate and work with federal, State and local government officers, units, activities and agencies in the promotion and attainment of more harmonious understanding and greater equality of rights between and among all racial religious and ethnic groups in this City.

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- (b) To enlist the cooperation of racial, religious and ethnic units, community and civic organizations, industrial and labor organizations and other identifiable groups of the City in programs and campaigns devoted to the advancement of tolerance, understanding and the equal protection of the laws of all groups and people.
 - (c) To hold and conduct public hearings or meetings relating to any and all types of discrimination. Except in accordance with the provisions of Section 153.10 governing complaints and investigations, these hearings shall be of a non-adjudicatory nature and shall not constitute investigations or adjudication of individual complaints regarding unlawful discrimination under the West Virginia Human Rights Act.
 - (d) To refer any individual or group complaint regarding alleged acts of unlawful discrimination to the West Virginia Human Rights Commission for investigation and adjudication.
 - (e) To recommend to Council policies, procedures, practices and legislation in matters and questions affecting human rights. Study problems and needs related to inclusivity in the City and make specific recommendations to the City Manager and to the City Council and other partners as pertinent.
 - (f) To prepare a written report on its work, functions and services for each year ending on June 30 and to deliver copies thereof to Council on or before December 1 next thereafter.
 - (g) To do all other acts and deeds necessary and proper to carry out and accomplish effectively the objectives, functions and services contemplated by the provisions of this article, including the promulgation of rules and regulations implementing the powers and authority hereby vested in the Commission.
 - (h) To create such advisory agencies within the City as in its judgment will aid in effectuating the purpose of this article; to study the problem of discrimination in all or specific fields or instances of discrimination because of race, religion, color, national origin, ancestry, sex, age, blindness, handicap, sexual orientation, gender identity, or veteran status; to foster, through community effort or otherwise, goodwill, cooperation and conciliation among the groups and elements of the population of the City and to make the recommendations to the Commission for the development of policies and procedures, and for programs of formal and informal education, which the Commission may recommend to the appropriate City agency. Such advisory agencies shall be composed of representative residents serving without pay. The Commission may itself make the studies and perform the acts authorized by this subsection. It may, by voluntary conferences with parties in interest, endeavor to eliminate discrimination in all stated fields and to foster goodwill and cooperation among all elements of the population of the City.
 - (i) To accept contributions from any person to assist in the effectuation of the purposes of this section and to see and enlist the cooperation of private, charitable, religious, labor and civic and benevolent organizations for the purposes of this section.
 - (j) To issue such publications and such results of investigation and research as in its judgement will tend to promote goodwill and minimize or eliminate discrimination; however, the identity of the parties involved shall not be disclosed.
 - (k) To advise, consult with, and inform the City Manager on any matter pertaining to inclusivity in the City.
 - (l) To support and develop program initiatives to promote residents' awareness and knowledge of both opportunities to increase inclusivity and current barriers which limit community inclusiveness and long-term sustainability.
 - (m) To learn about best practices for addressing issues.
 - (n) To create and implement an inclusive community plan for the City which increases public awareness of issues; promotes education and understanding, provides, enables, or enhances services; articulates planned collaboration; and promotes public participation.

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- (o) To review City plans and policies which contain matters relating to inclusivity.
 - (p) To use media and the internet to frame and convey information about issues, public programs, and service opportunities.

(Ord. No. 17-40, 10-17-2017)

Sec. 153.10. Complaints; procedures.

- (a) Any individual claiming to be aggrieved by an alleged unlawful discriminatory practice may make, sign, and file with the Commission a verified complaint, which shall state the name and address of the person, employer, labor organization, employment agency, owner, real estate broker, real estate salesman, or financial institution alleged to have committed the unlawful discriminatory practice complained of, and which shall set forth the particulars thereof and contain such other information as may be required by the Commission's rules and regulations. The Commission upon its own initiative may, in like manner, make, sign and file such complaint. Any employer, whose employees, or some of them, hinder or threaten to hinder compliance with the provisions of this article, may file with the commission a verified complaint, asking for assistance by conciliation or other remedial action, and in such event no hearings, orders or other actions shall be held, made or taken by the commission against such employer on the basis of the actions set forth in the employer's complaint. Any complaint filed pursuant to this article must be filed within 365 days after the alleged act of discrimination. No provision of this section shall prohibit the Commission from accepting complaints in a manner other than a verified writing and referring such complaints without prior investigation to the West Virginia Human Rights Commission.
- (b) After the filing of any complaint, or whenever there is reason to believe that an unlawful discriminatory practice has been committed, the Commission shall make a prompt investigation in connection therewith; provided, however, that the Commission may at any time elect to refer a complaint to the West Virginia Human Rights Commission and that the Commission shall, at any time the complaint or a subsequent investigation indicates that only acts prohibited by West Virginia Code Section 5-11-9 are alleged, refer such complaint to the West Virginia Human Rights Commission. Upon referral to the West Virginia Human Rights Commission, the Commission shall notify the complainant and cease its investigation. Upon a determination by the Commission in accordance with its applicable rules, any investigation may be conducted by an individual member or special committee of the Commission as authorized by the Commission.
- (c) If it is determination after such investigation that no probable cause exists for substantiating the allegations of the complaint, the Commission shall, within ten days from such determination, cause to be issued to the complainant written notice of such determination; and the complainant may, within ten days after such service, file with the Commission a written request for a meeting with the Commission to show probable cause for substantiating the allegations of the complaint. If it is determined after such investigation or meeting that probable cause exists for substantiating the allegations of the complaint, the Commission shall immediately endeavor to eliminate the unlawful discriminatory practices complained of by conference, conciliation, and persuasion. Neither the members of the Commission nor any administrative personnel shall disclose what has transpired in the course of the conference, conciliation and persuasion process; provided, that the Commission may publish or release the terms of settlement or conciliation when the complaint has been conciliated or settled.
- (d) In case of a failure to eliminate such practice, or in advance thereof, if in the judgment of the Commission circumstances warrant, the Commission shall cause to be issued and served a written notice, together with a copy of such complaint as the same may have been amended, in the manner provided by law for the service of summons in civil actions, directing the person, employer, labor organization, employment agency, owner, real estate broker, real estate salesman, or other institution named in such complaint, hereinafter referred to as respondent, to answer the charges of such complaint at a public or private hearing before the Commission in the county where the respondent resides or transacts business at a time and place specified

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in such notice; provided, however, that such written notice shall be served at least 30 days prior to the time set for the hearing. The Commission or its chair shall delegate the power and authority to conduct the hearing to a hearing examiner, who may be an individual commissioner; a panel of commissioners; or a third-party hearing examiner, who shall be an attorney duly licensed to practice law in West Virginia, provided that funding has been allocated to the Commission for retention of such hearing commissioner.

- (e) The hearing shall be conducted in accordance with this section and the rules and regulations of the Commission and shall be designed to create a sufficient record to permit review in any court of competent jurisdiction. The respondent may file a written, verified answer to the complaint and appear at such hearing in person or otherwise, with or without counsel, and submit testimony and evidence. The complainant may appear at such hearing in person or otherwise, with or without counsel, and submit testimony and evidence. In addition to any other testimony and evidence received, the hearing examiner may consider the record of the investigation of the complaint and include such record in the record of the hearing. Following the hearing, the hearing examiner shall prepare or cause to be prepared a copy of the record of the hearing and the written findings and conclusions of the hearing examiner and transmit the same to the Commission.
- (f) If, after such hearing and consideration of all of the testimony, evidence and record in the case, the Commission finds that a respondent has engaged in or is engaging in any unlawful discriminatory practice as defined in this article, the Commission shall issue and cause to be served on such respondent an order to cease and desist from such unlawful discriminatory practice and to take such affirmative action, including but not limited to, hiring, reinstatement or upgrading of employees, with or without back pay, admission or restoration to membership in any respondent labor organization, or the admission to full and equal enjoyment of the services, goods, facilities, or accommodations offered by any respondent place of public accommodation, and the sale, purchase, lease, rental or financial assistance to any complaint otherwise qualified for the housing accommodation or real property denied in violation of this article, as in the judgment of the Commission will effectuate the purposes of this article, and including a requirement for reporting of the manner of compliance, payment of expenses and lost wages of any witness called by the complainant or Commission, payment to the complainant of reasonable attorney fees, expert witness fees, and legal costs, and payment to the Commission of its costs in conducting the hearing; and any other legal or equitable relief as the Commission deems appropriate. Such order shall be accompanied by findings of fact and conclusions of law sufficient to permit review by any court of competent jurisdiction.
- (g) Nothing in this section shall be construed to prohibit the filing of a private lawsuit or other cause of action at any time.
- (h) The Commission may adopt rules and regulations implementing the procedures set forth in this section, so long as such rules and regulations are consistent with the provisions of this article. Any such rules and regulations adopted by the Commission shall be filed with the City Clerk and made available for public inspection.

(Ord. No. 17-40, 10-17-2017)

Sec. 153.11. Exemptions; conflicts; savings clause.

- (a) Notwithstanding anything to the contrary set forth within this article, nothing in this article 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 of the West Virginia Constitution. This article shall not pertain to a religious organization, association, educational institution, or society employing individuals whose primary duties consist of teaching, or spreading doctrine or belief, religious governance, supervision of a religious order, supervision of persons teaching or spreading religious doctrine or belief, or supervision or participation in religious ritual or worship. Nothing in this article shall prevent a religious organization, association, educational institution, or society from restricting membership or access to any of its religious services or activities to those who are members of the same religion. These exemptions are intended, and

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shall be construed, to protect rights established by the United States and West Virginia Constitutions as determined by applicable judicial decisions.

- (b) In the event of a conflict between the interpretation of a provision of West Virginia Code Chapter 5, Article 11, and the interpretation of a similar provision contained in any part of this article, the interpretation of the provision in West Virginia Code shall apply. Until such time as the legislation of the State provides equal or broader protections for the classifications of veteran status, sexual orientation, or gender identity, the provisions contained herein control the application of this article to those classifications.
- (c) If any provision of this article is finally determined to be unconstitutional or otherwise unenforceable, it is the intent of the City Council that the remaining provisions remain in force and apply without regard to the unenforceable provision, which shall be treated as though it is omitted in the application of this article.

(Ord. No. 17-40, 10-17-2017)