

ORDINANCE

NO. 17-1333

AN ORDINANCE To Amend The Code Of The Township Of Upper Dublin, adding Chapter 128, Human Relations Commission; Discrimination; To Provide For The Creation of The Upper Dublin Township Human Relations Commission; To Empower The Human Relations Commission To Receive And Mediate Complaints; To Prohibit Discrimination In Housing, Commercial Property, Employment and Public Accommodations Based Upon 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 Because Of An Individual's Sexual Orientation, Gender Identity Or Gender Expression; Providing Definitions; And Providing For The Awarding Of Damages By A Court Having Jurisdiction.

The Board of Commissioners of the Township of Upper Dublin hereby ordains:

Section 1. The Code of the Township of Upper Dublin shall be amended by the addition of a new Chapter 128, Human Relations Commission, to provide as follows:

Chapter 128

Human Relations Commission; Discrimination

§ 128.1- Purpose and Declaration of Policy.

- A. In order to ensure that all persons, regardless of race, color, religious creed, ancestry, age, sex, national origin, physical or mental disability, use of guide or support animals because of the blindness, deafness or physical or mental disability of the user or because the user is a handler or trainer of support or guide animals, or because of a person's sexual orientation, gender identity or gender expression 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. It is hereby declared to be the public policy of Upper Dublin Township to foster the employment of all individuals in accordance with their fullest capacities regardless of their race, color, religious creed, ancestry, age, sex, national origin, physical or mental disability, use of guide or support animals because of the blindness, deafness or physical or mental disability of the user or because the user

is a handler or trainer of support or guide animals, or because of a person's sexual orientation, gender identity or gender expression.

- C. It is the intention of this chapter 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 of the Township.
- D. This chapter shall be deemed an exercise of the police power of Upper Dublin Township for the protection of the public welfare, prosperity, health and peace of the Township, its residents and the Upper Dublin Township community.
- E. No power or duty granted hereunder to the Upper Dublin Human Relations Commission shall exceed 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.

§ 128.2 - 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. **BOARD OF COMMISSIONERS** -- The duly elected Board of Commissioners of Upper Dublin Township.
- B. **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 person's race, color, religious creed, ancestry, age, sex, national origin, physical or mental disability, use of guide or support animals because of the blindness, deafness or physical or mental disability of the user or because the user is a handler or trainer of support or guide animals, or a person's actual or perceived sexual orientation, gender identity or gender expression.
- C. **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 or mental disability 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.

- D. EMPLOYER -- Any person, as defined below in Section 128.2 H, including the Township, its departments, boards and Commissions, and any other government agency or school district within its jurisdiction, employing four or more individuals within the Township. "Employer" excludes individuals acting in a supervisory capacity unless they are an owner of the entity employing the person aggrieved ("Complainant").
- E. 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.
- F. GENDER IDENTITY -- The gender(s), or lack thereof, a person self-identifies as, whether or not based on biological fact.
- G. 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. This provision shall not apply to the rental or leasing of a room or rooms in an owner occupied, single family residential property or a carriage house or a garage on an owner-occupied, single family residential property, but this provision shall apply to multi unit apartment buildings whether or not owner occupied with two or more dwelling units.
- H. PERSON -- One or more individuals, partnerships, associations, organizations, corporations, limited liability entities, legal representatives, trustees in bankruptcy or receivers, including but 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.
- I. PUBLIC ACCOMMODATION -- Any accommodation 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.
- J. SEXUAL ORIENTATION -- Actual or perceived homosexuality, heterosexuality and/or bisexuality.
- K. TOWNSHIP -- The Township of Upper Dublin, County of Montgomery, Commonwealth of Pennsylvania.

§ 128.3 - Unlawful Practices.

- A. Discrimination in Housing Accommodations, publicly offered commercial property transactions, employment or Public Accommodations is prohibited under this chapter.
- B. 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.
- C. 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.

§ 128.4 - Exceptions.

- A. An employer shall not be prevented from enforcing a dress code which is reasonably related to the business or profession being conducted. However, no dress code shall deny the right to dress according to one's gender identity.

§ 128.5 - Establishment of Human Relations Commission.

- A. Pursuant to § 12.1 of the Pennsylvania Human Relations Act, there is hereby established a Human Relations Commission in and for the Township of Upper Dublin (hereinafter referred to as the "Upper Dublin Township Human Relations Commission" or the "Commission").
- B. The Commission shall consist of no less than 5 and no more than 9 members, at the Board of Commissioner's discretion, who shall serve overlapping terms of three years each. All members of the Commission shall be appointed by the Board of Commissioners. Members shall be residents of Upper Dublin Township or business owners operating within the Township. 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. One of the Commission's members shall be appointed by the members thereof as Chairperson. The Chairperson will be responsible for setting Commission meetings, coordinating with the Township 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 committed within the Township of Upper Dublin.

- E. The Board of Commissioners 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 Board of Commissioners.
- G. The powers and duties granted to the Commission herein shall terminate immediately upon the Pennsylvania Human Relations Commission being given jurisdiction over Discriminatory Acts taken on the basis of a person's actual or perceived sexual orientation, gender identity or gender expression, except for complaints previously filed with the Commission.
- H. Members of the Commission shall, as soon after their appointment as practical, attend such training and education seminars or sessions as deemed necessary to acquaint themselves with the functioning of the Upper Dublin Human Relations Commission under this Chapter, as well as the terms, conditions and provisions of the Pennsylvania Human Relations Act, and the operation of the Pennsylvania Human Relations Commission. Such training and education shall be as directed by the Chairperson, and shall be performed in conjunction with the state Human Relations Commission.
- I. The Commission shall operate within the scope of the funds which may be allocated, on an annual basis, by the Board of Commissioners and shall not exceed the annual allocation in any year, except upon prior approval by the Board of Commissioners. It is the intention of the Board of Commissioners that the Commission's actions shall be supported by volunteers, unpaid staff, and volunteer efforts and shall be as close to "zero-cost" to the Township as reasonably feasible.

§ 128.6 - 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 prohibited 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.
- (2) Complaints may be filed in person or by mail at the Township Manager's office. All complaints must be received by the Township Manager's office within 180 days of the alleged Unlawful Practice, or the complaint will not be considered timely.
- (3) The Township Manager shall record the date and time of receiving the complaint and shall immediately forward a complete copy to the Chairperson of the Upper Dublin Township Human Relations Commission and to the Board of Commissioners..

B. Notification and answer.

- (1) Within 30 days of its receipt of a complaint, the Human Relations Commission shall determine if it has jurisdiction hereunder to hear the complaint. If the Commission determines that it does not have such jurisdiction, it shall dismiss the complaint and notify the aggrieved party. If the Commission determines it has jurisdiction 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 Complainant informing the Complainant 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 Township Manager a written verified answer to the complaint within 30 days of Respondent's receipt of the complaint from the Township. It shall be conveyed by the Township Manager to the Chairperson of the Upper Dublin Township Human Relations Commission within 10 days of its receipt by the Township Manager. The Commission shall promptly send a copy of the answer to the Complainant.

C. Mediation.

- (1) After the answer 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 dispute.
- (4) Dismissal of the Complaint Following Mediation.
 - (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, the parties shall be advised of their right to proceed to the Court of Common Pleas of Montgomery County and/or to the Pennsylvania Human Relations Commission if appropriate.

§ 128.7 - 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 Upper Dublin 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.

§128-8 – Violations and penalties.

Any person who shall violate any provision of §128-3 of this Chapter may be subject by the Montgomery County Court of Common Pleas, or any court of competent jurisdiction, to the penalties enumerated in Sections 9(f)(1) and (2), 9.2, and 9.3, and Sections 10 and 11 of the Pennsylvania Human Relations Act. The penalties contained in this Chapter shall mirror any future changes to the Pennsylvania Human Relations Act as adopted by the General Assembly and approved by the Governor.

- A. This Chapter extends the protections of the Pennsylvania Human Relations Act to include discrimination based on actual or perceived sexual orientation, gender identity or gender expression.
- B. All penalties included in the Pennsylvania Human Relations Act shall be extended to include all protected classes enumerated in this Chapter.

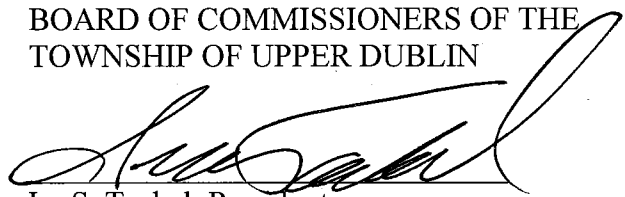
Section 2. Nothing in this Ordinance shall be construed to affect any suit or proceedings in any Court, any rights acquired or liability incurred, any permit issued, or any cause or causes of action existing under the Township's Code of Ordinances prior to the adoption of this amendment.

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.

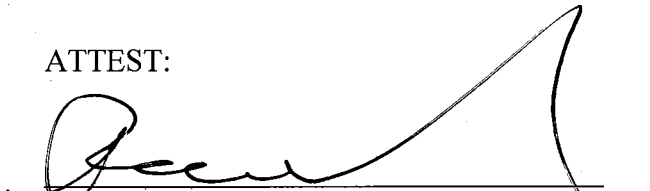
Section 4. This Ordinance shall take effect and be in force from and after its approval date as required by law.

Approved by the Board this 12th day of September, 2017.

BOARD OF COMMISSIONERS OF THE
TOWNSHIP OF UPPER DUBLIN


Ira S. Tackel, President

ATTEST:


Paul A. Leonard, Secretary/Township Manager