



DeKalb County Government

Manuel J. Maloof Center
1300 Commerce Drive
Decatur, Georgia 30030

Agenda Item

File ID: 2023-

Substitute

7/11/2023

Public Hearing: YES NO

Department: Board of Commissioners

SUBJECT:

Commission District(s): All Districts

An Ordinance to Amend the DeKalb County Code pertaining to Non-Discrimination including Non-Discrimination by businesses offering a public accommodation

Information Contact: Commissioners Patrick and Cochran-Johnson

Phone Number: 404-371-2886

PURPOSE:

To enact an ordinance pertaining to non-discrimination, protected classes, and non-discrimination by businesses offering a public accommodation.

NEED/IMPACT:

The County finds and declares that the practice of discrimination against any person on the basis of race, color, religion, national origin, sex, pregnancy, age, disability, genetic information, familial status, political affiliation, political opinion, sexual orientation, parental status, gender identity, marital status or protective hairstyle in places of public accommodation is contrary to the public welfare, health, safety, and morals of the residents of DeKalb County.

The County deems it essential to provide realistic, reasonable discrimination protections locally and determines that such measures are necessary to discourage anyone operating a business offering public accommodations within DeKalb County from discriminating.

The County also desires to amend the Code to protect against discrimination based upon hair texture and hairstyles associated with race, gender identity, cultural identity, national origin or religious belief, and to further ensure consistency, the County seeks to provide general definitions for protected characteristics that will apply throughout the Code of DeKalb County, unless otherwise specified.

FISCAL IMPACT:

Not applicable.

RECOMMENDATION:

To hold the public hearing, adopt the attached ordinance and authorize the Chief Executive Officer or designee to execute all necessary documents.

AN ORDINANCE TO AMEND THE CODE OF DEKALB COUNTY, GEORGIA, AS REVISED 1988, PERTAINING TO NON-DISCRIMINATION; TO PROHIBIT DISCRIMINATION BY BUSINESSES OR OTHERS OFFERING A PUBLIC ACCOMMODATION; AND FOR OTHER LAWFUL PURPOSES

WHEREAS, the Governing Authority of DeKalb County is vested with the authority to adopt ordinances or resolutions to govern and regulate trades, businesses, callings, avocations or professions, not contrary to regulations prescribed by general law, for the purpose of protecting and preserving the health, safety, welfare, and morals of the citizens of DeKalb County, and to prescribe penalties for the violation of any such ordinance or resolution; and

WHEREAS, the Governing Authority finds and declares that the practice of discrimination against any person on the basis of race, color, religion, national origin, sex, pregnancy, age, disability, genetic information, familial status, political affiliation, political opinion, sexual orientation, parental status, gender identity, marital status, or protective hairstyle in places of public accommodation is contrary to the public welfare, health, safety, and morals of the residents of DeKalb County; and

WHEREAS, the Governing Authority deems it essential to provide realistic, reasonable discrimination protections locally and determines that such measures are necessary to discourage anyone operating a business offering public accommodations within DeKalb County from discriminating; and

WHEREAS, on February 9, 2021, the Governing Authority adopted an ordinance to expand the classes and characteristics protected from discrimination in DeKalb County and provide consistency in the application of non-discrimination protections throughout the Code of DeKalb County; and

WHEREAS, the Governing Authority desires to amend the Code to protect against discrimination based upon hair texture and hairstyles associated with race, gender identity, cultural identity, national origin or religious belief; and

WHEREAS, to further ensure consistency, the Governing Authority seeks to provide general definitions for protected characteristics that will apply throughout the Code of DeKalb County, unless otherwise specified.

NOW, THEREFORE, BE IT ORDAINED by the DeKalb County Governing Authority, and it is hereby ordained by the authority of the same, that the Code of DeKalb County, as Revised 1988, is hereby amended as follows:

PART I: ENACTMENT

Chapter 1, Article I, Section 1-2 of the Code of DeKalb County, as Revised 1988, is hereby amended by adding the following new definitions in alphabetical order, to read as follows:

Sec. 1-2. Definitions and rules of construction.

Disability means a physical or mental impairment that substantially limits one or more of an individual's major life activities, and also includes a record of such an impairment or being regarded as having such an impairment. This definition is intended to be consistent with the definition of disability in the Americans with Disabilities Act, 42 U.S.C. § 12102, as it may be amended from time to time.

Familial status means an individual's past, current or prospective status as a parent or legal guardian to a child or children below the age of 18 who may or may not reside with that individual.

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

Marital status means an individual's past, current, or prospective status as single, married, domestically partnered, divorced or widowed.

Parental status means an individual's status as a parent of one or more children or stepchildren under eighteen (18) years of age. This includes an individual who is pregnant, is in the process of securing legal custody of a child under eighteen (18) years of age, or is in the process of adopting or fostering a child under eighteen (18) years of age.

Protected characteristics include race, color, religion, national origin, sex, pregnancy, age, disability, genetic information, familial status, political affiliation, political opinion, sexual orientation, parental status, gender identity, marital status, protective hairstyle, and any other characteristics protected by federal or state law.

Protective hairstyle means a hairstyle necessitated by, or resulting from, the immutable characteristics of a hair texture associated with race or expression of gender identity, cultural identity, national origin, or religious beliefs, including but not limited to braids, locks, afros, curls, and twists.

Race means the fact or condition of belonging to a racial division or group and the qualities, physical or cultural characteristics, or traits associated with this, including but not limited to ancestry, skin color, hair texture or styles, or certain facial features.

Religion means and includes all aspects of religious observance and practice, as well as belief.

Religious organization means an entity which conducts regular worship services or is qualified as a religious organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as now or hereafter amended.

Sexual orientation means an individual's actual or perceived orientation as heterosexual, homosexual, bisexual, or asexual.

* * *

Chapter 15 of the Code of DeKalb County, as Revised 1988, is hereby amended to delete subsections 15-387(b)(2) and 15-389(e) in their entirety, substituting in lieu thereof the following new subsections 15-387(b)(2) and 15-389(e) to read as follows:

Sec. 15-387. Suspension or Revocation of Permit

(b) Suspension for six (6) months. For reasons set forth below, a business license or a driver's permit issued under this article may be suspended for six (6) months:

(2) Refusing to accept a passenger solely because of one or more of the passenger's protected characteristics as defined in section 1-2. Operators shall not refuse to accept a passenger unless the passenger is obviously intoxicated or dangerous.

Sec. 15-389. Miscellaneous requirements and regulations.

(e) No taxicab driver shall refuse to accept a passenger solely on the basis of one or more of that passenger's protected characteristics as defined in section 1-2.

* * *

The Code of DeKalb County, as Revised 1988, is hereby amended by adding an article to Chapter 15 ("Licenses, Permits, and Miscellaneous Business Regulations"), to be numbered XV,

which shall read as follows:

ARTICLE XV. – NON-DISCRIMINATION

Sec. 15-563. – Definitions.

For purposes of this article, certain terms shall be interpreted or defined as follows unless the context clearly indicates otherwise.

Business shall have the same meaning as that term is defined to have in section 15-27 of this Code, now and as may be hereafter amended.

Hearing officer means a person chosen as described in section 15-567 below, who is charged with determining the validity of alleged violations of this article, and upon determining that a violation has occurred, assessing appropriate penalties as provided in this article.

Mediator means a state registered neutral, who shall be chosen by the executive assistant/chief operating officer or his/her designee to perform the duties described in section 15-566 below.

Place of public accommodation means any place, store, or other establishment that supplies accommodations, goods or services to the general public, or that solicits or accepts the patronage or trade from the general public, or that is supported directly or indirectly by government funds. The term does not include any private club, bona fide membership organization, or other establishment that is not in fact open to the public.

Sec. 15-564. – Unlawful practices.

It shall be an unlawful discriminatory practice for any business that is a place of public accommodation, or for any owner, operator, lessee, manager, agent or employee of such business, to refuse, deny or make a distinction, directly or indirectly, in offering its goods, services, facilities, and accommodations, to any person as covered by this article because of one or more of that person's protected characteristics, as defined in section 1-2.

Sec. 15-565. – Exemptions.

- (a) This article shall not prohibit a religious organization from limiting its non-commercial accommodations, advantages, facilities, membership, and privileges to persons of the same religion.
- (b) Nothing in this article shall require a business to accommodate an individual's religion if the accommodation would cause an undue hardship to the conduct of the business, including by infringing on the rights of employees, customers, clients, or patients, or by creating a

significant difficulty or expense for the business.

- (c) Nothing in this article shall prohibit a nonprofit private club that is in fact not open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.
- (d) This article shall apply to sale or rental of real property only to the extent permitted by the Georgia Fair Housing Act, O.C.G.A. §8-3-201 et seq., as it may be amended from time to time.
- (e) Nothing in this article shall be construed to prohibit children's clubs, institutions or membership organizations from restricting non-commercial accommodations, advantages, facilities, membership, and privileges to persons of the same sex, if such sex restriction is fundamental to the nature or purpose of the club, institution, or membership organization.
- (f) Nothing in this article shall be construed to prohibit treating disabled persons more favorably than non-disabled persons or to prohibit treating senior citizens over the age of 55 more favorably than non-senior citizens.
- (g) Nothing in this article shall be construed to prohibit offering discounts, special prices, or other special arrangements to children, families, or senior citizens over age 55.
- (h) Nothing in this article shall prohibit imposing age limits up to age 21.
- (i) Nothing in this article shall be construed to require any entity subject to this article to make changes requiring a building permit to any existing facility, except as otherwise required by law.

Sec. 15-566. – Enforcement.

- (a) Any person aggrieved by a potential violation of this article may file a verified complaint with the county's executive assistant/chief operating officer or designee on a form to be provided by the County. Any such complaint must be filed within sixty (60) days after the alleged act of discrimination. A filing fee of fifty dollars (\$50.00) shall be paid by the complainant contemporaneously with the filing of a discrimination complaint; however, a complainant shall receive a refund of the filing fee if the complaint survives the dismissal provisions of Section 15-568 below.
- (b) The executive assistant/chief operating officer or designee shall cause

the complaint to be served on the business accused of a violation as soon as practicable but in no event later than seven (7) calendar days after receipt of a verified complaint. Service may be by personal service, by certified mail, return receipt requested or by statutory overnight delivery.

- (c) The complaint shall first be referred to a mediator for non-binding mediation. Participation in mediation shall be voluntary for both parties. Any fees charged by the mediator shall be split equally between the parties, unless at the conclusion of the mediation, both parties agree to assess these costs of mediation in some other manner.
- (d) Any mediation hereunder shall be conducted in accordance with procedures to be established by the mediator.
- (e) If, within fifteen (15) days of the conclusion of the mediation, either party notifies the executive assistant/chief operating officer or designee in writing that such party is dissatisfied with the results of the mediation, or if either party elects not to participate in mediation, the complaint shall be referred to a hearing officer as per section 15-567.

Sec. 15-567. – Appointment of hearing officer, service of complaint, burden of proof.

- (a) All complaints not resolved by mediation shall be heard before a hearing officer who: (i) shall be a competent attorney at law of good standing in his or her profession; (ii) shall have at least five (5) years' experience in the practice of law; (iii) shall not be an employee of the County; (iv) shall not hold any elected or appointed office within the County; and (v) shall not have served as outside counsel to the County, its elected officials, or employees in the preceding year. The executive assistant/chief operating officer or designee shall maintain a listing of no less than five (5) qualified attorneys, who must be licensed to practice law in the State of Georgia, to serve as a hearing officer pursuant to this section. Upon receipt of the letter of dissatisfaction with the result of the mediation, or if either party elects not to participate in mediation, the executive assistant/chief operating officer or designee shall draw names randomly from the listing of qualified hearing officers and appoint the first one (1) who is available to serve in the matter.
- (b) In all hearing officer proceedings under this section, the burden of proof shall be on the complaining party. Further, the evidentiary standard required to establish a violation under this article shall be based on a preponderance of the evidence.

Sec. 15-568. – Hearing.

- (a) The alleged violator shall have fifteen (15) days after receiving notice

of the appointment of a hearing officer in which to file an answer to the complaint, provided, however, that the alleged violator shall have no obligation to file an answer to any complaint.

- (b) Upon the expiration of the fifteen-day answer period, the hearing officer shall review the complaint and answer, if any, to determine: (i) whether the complaint is in conformity of the requirements of sections 15-566 and 15-567 above; (ii) whether upon consideration of the complaint and answer, the complaint is unjustified, frivolous, or patently unfounded; or (iii) whether upon consideration of the complaint and answer, the complaint demonstrates facts sufficient to invoke the County's police powers.
- (c) If the complaint fails based upon the requirements of the foregoing subsection (b), the hearing officer shall dismiss the complaint in a signed written notice stating the basis for dismissal, and shall serve that notice on the parties, with a copy to the executive assistant/chief operating officer. Service shall be made by one of the methods listed in the last sentence of section 15-566(b) or, if the parties consent in advance, by e-mail.
- (d) Upon a determination that the complaint should not be dismissed pursuant to the foregoing subsection (c), the hearing officer shall be empowered to collect evidence and information concerning any complaint and to add the findings and results of his/her investigation to the file containing such complaint. In furtherance of this investigation, the hearing officer may:
 - (1) Seek such further information from the complainant or the alleged violator through inquiry or written questions, provided, however, that the alleged violator shall have no obligation to answer any inquiries, or
 - (2) Conduct a hearing regarding the allegations set forth in the complaint. At any hearing, the alleged violator who is the subject of inquiry shall have the right: (i) to representation by counsel at all stages of these proceedings, (ii) to written notice of the hearing at least ten (10) calendar days before the first hearing, (iii) to hear and examine the evidence and witnesses, (iv) to not testify, and (v) to submit evidence and call witnesses to oppose or mitigate the allegations. In all hearings held under this section, strict rules of evidence and civil procedure shall not apply.
- (e) All investigations under this section shall be completed within thirty (30) days of receipt of the alleged violator's response or the expiration of the fifteen-day answer period, whichever is earlier. Should the

investigation not be completed in said period, the complaint will be deemed dismissed as a failure to state facts sufficient to invoke the County's police power, and the hearing officer shall serve a signed written notice of such dismissal on the parties, with a copy to the executive assistant/chief operating officer. Service shall be made by one of the methods listed in the last sentence of section 15-566(b) or, if the parties consent in advance, by e-mail.

- (f) Within seven (7) calendar days of the completion of the investigation, the hearing officer shall serve on the parties a written and signed notice of one of the following final actions (served by one of the methods listed in the last sentence of section 15-566(b) or, if the parties consent in advance, by e-mail), with a copy to the executive assistant/chief operating officer:
 - (1) Dismissal of the complaint on the grounds that it is unjustified, frivolous, unfounded, or that it fails to state facts sufficient to invoke the County's police power; or
 - (2) A finding that a violation of this article has occurred, in which the hearing officer may take any of the following actions or a combination thereof:
 - (i) Apply a civil penalty in an amount up to five hundred dollars (\$500.00) for each violation. An additional penalty may be assessed in an amount up to five hundred dollars (\$500.00) for repeat offenders. Failure to pay fines may result in the denial of a future application for business license or renewal license.
 - (ii) Recommend suspension or revocation of the violator's professional or business license or alcohol license pursuant to the applicable sections of this Code.
- (g) In addition, the hearing officer's fees shall be assessed to the non-prevailing party unless the hearing officer determines that the circumstances warrant assessing the costs in some other manner.

Sec. 15-569. – Right to appeal.

- (a) Any party adversely affected by the findings or recommendations of the hearing officer may obtain judicial review of such decision as provided in this section.
- (b) An action for judicial review may be commenced by filing a petition for review pursuant to the Superior and State Court Appellate Practice Act within thirty (30) days after written notice of the final action on a complaint pursuant to this article, signed by the hearing officer, has been

served upon the parties by one of the methods listed in the last sentence of section 15-568(e), with a copy to the executive assistant/chief operating officer. The filing of such petition shall act as supersedeas.

Sec. 15-570 – 15.585. – Reserved.

* * *

Chapter 20, Article I, Section 20-1 of the Code of DeKalb County, as Revised 1988, is hereby amended to delete the definition of “protected classes” in that section and replace it with the following definition of “protected characteristics”:

Sec. 20-1. Definitions

Protected characteristics shall have the same meaning as given to that term in section 1-2 of this Code, now and as it may be hereafter amended.

* * *

Chapter 20 of the Code of DeKalb County, as Revised 1988, is hereby further amended by deleting section 20-16, section 20-68 and section 20-194 in their entirety and substituting in lieu thereof the following new sections 20-16, 20-68 and 20-194 to read as follows:

Sec. 20-16. Equal opportunity employment.

The county is an equal opportunity employer. There shall be no discrimination against any applicant or employee based on the applicant’s or employee’s protected characteristics as defined in section 1-2 of this Code, or based on any other non job-related factors with regard to appointment, promotion, demotion, dismissal, discipline, training or any other aspect of personnel administration. This shall not prevent the application of a requirement that is a bona fide occupational qualification.

Sec. 20-68. Review of discrimination charge.

Any applicant who believes unjust discrimination has been exercised in any phase of the pre-employment process because of one or more of the applicant’s protected characteristics as defined in section 1-2 of this Code, may appeal to the executive assistant/chief operating officer. Such appeal must be filed in writing within one hundred eighty (180) days after the occurrence of the alleged discriminatory action, and must include the date, time, place, name(s) and specific charge of discrimination. The executive assistant/chief operating officer or designee shall investigate the alleged discriminatory action, and the executive assistant/chief operating officer’s decision shall be binding.

Sec. 20-194. Review of alleged discriminatory disciplinary action.

Any employee who believes that a disciplinary action was discriminatory based on one or more of the employee's protected characteristics, as defined in section 1-2 of this Code, may appeal to a hearing officer within ten (10) days from the effective date of the action. Such appeal shall be filed with the director and set forth in detail the reasons why the employee contends the disciplinary action was based upon one or more of the employee's protected characteristics, including specifying the date(s), time(s), place(s), and specific type(s) of each instance of discrimination alleged. In such cases, the hearing officer may reverse the decision of the department head only on a finding that it was based on an error of fact or was motivated by intentional discrimination against the employee because of one or more of the employee's protected characteristics as defined in section 1-2. The same provisions related to the hearing officer as outlined in section 20-193 shall also apply in the case of an employee discrimination appeal under this section.

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PART II. EFFECTIVE DATE

This ordinance shall become effective one hundred and eighty (180) days after adoption by the Board of Commissioners and approval by the Chief Executive Officer and shall be codified in accordance with state law and the Code of DeKalb County.

PART III. SEVERABILITY

Should any section or provision of this ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the ordinance as a whole, or any part thereof, other than the part so declared to be invalid or unconstitutional.

PART IV. REPEAL OF CONFLICTING ORDINANCES

All ordinances or parts of ordinances in conflict herewith are hereby expressly repealed.

ADOPTED by the Board of Commissioners of DeKalb County, this _____ day of _____ 2023.

ROBERT J. PATRICK
Presiding Officer
Board of Commissioners
DeKalb County, Georgia

APPROVED by the Chief Executive Officer of DeKalb County, this _____ day of _____ 2023.

MICHAEL L. THURMOND
Chief Executive Officer
DeKalb County, Georgia

ATTEST:

BARBARA NORWOOD-SANDERS, CCC
Clerk to the Board of Commissioners and Chief Executive Officer
DeKalb County, Georgia

APPROVED AS TO FORM:

APPROVED AS TO SUBSTANCE:

VIVIANE H. ERNSTES
County Attorney
DeKalb County, Georgia

ZACHARY L. WILLIAMS
Chief Operating Officer
DeKalb County, Georgia