



# DeKalb County Government

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

## Agenda Item

File ID: 2021-2734

Substitute

9/28/2021

Public Hearing: YES  NO

Department: Board of Commissioner - District 1

### **SUBJECT:**

Commission District(s): All Commission Districts

**A RESOLUTION REQUESTING THE DEKALB COUNTY ADMINISTRATION REVIEW AND CONSIDER SUPPORTING AN AMENDMENT TO THE CODE OF DEKALB COUNTY, GEORGIA PERTAINING TO NON-DISCRIMINATION; TO PROHIBIT DISCRIMINATION BY BUSINESSES OR OTHERS OFFERING A PUBLIC ACCOMMODATION; AND FOR OTHER LAWFUL PURPOSES**

Information Contact: Commissioner Robert Patrick

Phone Number: 404-371-3052

### **PURPOSE:**

To request that the Administration (1) review; (2) provide feedback, revisions, and responses, as appropriate; and (3) consider supporting an amendment to the Code of DeKalb County, As Revised, 1988 to address discrimination in public accommodation and to provide general definitions of protected classes and characteristics.

### **NEED/IMPACT:**

The proposed Ordinance amendment would provide realistic, reasonable discrimination protections locally and discourage anyone operating a business or offering public accommodations within DeKalb County from discriminating.

### **FISCAL IMPACT:**

No cost to the County.

### **RECOMMENDATION:**

To adopt the attached Resolution requesting that the Administration (1) review; (2) provide feedback, revisions, and responses, as appropriate; and (3) consider supporting an amendment to the Code of DeKalb County, As Revised, 1988 to address discrimination in public accommodation and to provide general definitions of protected classes and characteristics.

**A RESOLUTION REQUESTING THE DEKALB COUNTY ADMINISTRATION REVIEW AND CONSIDER SUPPORTING AN AMENDMENT TO THE CODE OF DEKALB COUNTY, GEORGIA 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 Board of Commissioners 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, domestic relationship status, parental status, gender identity or racial profiling in places of public accommodations is contrary to the public welfare, health, safety, and morals of the residents of DeKalb County; and

**WHEREAS**, the Board of Commissioners deems it essential to provide realistic, reasonable discrimination protections locally and determines that such measures are necessary to discourage anyone operating a business or 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**, to further ensure consistency, the Board of Commissioners seeks to provide general definitions for these protected classes and characteristics which will apply throughout the Code of DeKalb County unless otherwise specified; and

**WHEREAS**, a proposed Amendment to the Code of DeKalb County, As Revised 1988, addressing discrimination in public accommodations and providing general definition of protected classes and characteristics has been developed and is attached hereto as "Exhibit A"; and

**WHEREAS**, adopting and implementing an amendment to the Code of DeKalb County, As Revised, 1988, to address discrimination in public accommodation and to provide general definitions of protected classes and characteristics requires action by both the Executive and Legislative branches;

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Commissioners of DeKalb County, Georgia, to:

**Request that the Administration (1) review; (2) provide feedback, revisions, and responses, as appropriate; and (3) consider supporting an amendment to the Code of DeKalb County, As Revised, 1988 to address discrimination in public accommodation and to provide general definitions of protected classes in accordance with Attachment A hereto.**

**ADOPTED** by the DeKalb County Board of Commissioners, this \_\_\_\_day of \_\_\_\_\_, 2021.

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**STEPHEN R. BRADSHAW**

Presiding Officer  
Board of Commissioners  
DeKalb County, Georgia

**ATTEST:**

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**BARBARA H. SANDERS-NORWOOD, CCC**

Clerk to the Board of Commissioners and  
Chief Executive Officer  
DeKalb County, Georgia

**APPROVED AS TO FORM:**

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**VIVIANE H. ERNSTES**

County Attorney

# **ATTACHMENT A**

**AN ORDINANCE****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, calling, 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, domestic relationship status, parental status, gender identity, or racial profiling in places of public accommodations 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 or 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**, to further ensure consistency, the Governing Authority seeks to provide general definitions for these protected classes and characteristics which will apply throughout the Code of DeKalb County unless otherwise specified; and

**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*, with respect to a person, means a physical or mental impairment that substantially limits one or more major life activity, as specified in 42 U.S.C. § 12102. This includes people who have a record of such impairment, even if they do not currently have a disability, and those who do not have a disability but are regarded as having a disability.

*Familial status* means persons eighteen (18) years of age or older who are spouses, former spouses, parents or stepparents and children or stepchildren, and persons who are presently residing together or have resided together in the past, and persons who have a child in common regardless of whether they have been married or have lived together at any time.

*Gender identity* means the actual or perceived gender-related identity, expression, appearance, mannerisms, or other gender-related characteristics, regardless of the individuals designated sex at birth.

*Parental Status* means persons with one or more children or stepchildren who are under eighteen (18) years of age. This includes persons who are pregnant and people who are in the process of securing legal custody of a person under eighteen (18) years of age, including persons who are in the process of adopting a child or fostering a child.

*Protected classes* means minorities, females, handicapped, older workers, and other classes, that include race, color, religion, national origin, sex, pregnancy, age, disability, genetic information, familial status, political affiliation, political opinion, sexual orientation, domestic relationship status, parental status, gender identity, racial profiling and marital status, or other classes as designated by federal or state law for special employment consideration.

*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 beliefs include theistic beliefs as well as non-theistic moral or ethical beliefs which are sincerely held with the strength of traditional religious views.

*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 sections 15-387(b)(2) and 15-389 in their entirety, substituting in lieu thereof the following new sections 15-387(b)(2) and 15-389 to read as follows:*

\* \* \*

**Sec. 15-387(b)(2): 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 the real or perceived inclusion or exclusion of such passenger in a Protected Class as defined by 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.**

No taxicab driver shall refuse to accept a passenger solely on the basis of that passenger's real or perceived inclusion or exclusion in a Protected Class as defined by 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 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 damages, penalties and/or costs as provided in this article.

*Mediator* means a state registered mediator, who shall be chosen by the County 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 to 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.

*Rental housing* means any real property that is leased to a tenant or tenants.

*To rent* means to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

### Sec. 15-564. – Unlawful practices.

- (a) It shall be an unlawful discriminatory practice for a business to discriminate against any person in the terms, conditions, or privileges of sale or rental of real property or rental housing, or in the provision of services or facilities in connection therewith, because of the real or perceived inclusion or exclusion of such person in a Protected Class as defined in section 1-2 or to discriminate against any person in such person's use or occupancy of rental housing because of the real or perceived inclusion or exclusion of any person in an Protected Class as defined by section 1-2 of the people with whom such person associates.
- (b) It shall be an unlawful discriminatory practice for any business, as defined herein being the owner, operator, lessee, manager, agent or employee of any place of public accommodation, 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 the real or perceived inclusion or exclusion of any person in an Protected Class as defined by 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 prohibit a nonprofit private club 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.
- (c) 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.
- (d) 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.
- (e) Nothing in this article shall be construed to prohibit offering discounts, special prices, or other special arrangements to children or families.
- (f) Nothing in this article shall prohibit imposing age limits up to 21.
- (g) 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 complaint with the County [insert job title] 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 all discrimination complaints; 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 County [insert job title] shall cause the complaint to be served on the person charged with 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. The mediator shall be a person, selected from a list provided by the County, to serve as the mediator. 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 County [insert job title] in writing that such person 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; and (iii) shall not be an employee of the County, shall not hold any elected or appointed office within the County, and shall not have served as outside counsel to the County, its elected officials, or employees in the preceding year. The County [insert job title] 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 County [insert job title] 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 person charged in the complaint shall have fifteen (15) days to file an answer to the complaint provided, however, that the person charged 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 section 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 complaint shall be dismissed stating the basis for said dismissal.
- (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 its investigations 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 charged 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. 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.
- (f) Within seven (7) calendar days of the completion of the investigation, the hearing officer shall either:

- (1) Dismiss the complaint on the grounds that it is unjustified, frivolous, patently unfounded, or that it fails to state facts sufficient to invoke the County's police power; or
- (2) Find that a violation of this article has occurred, and 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 mediator's fees and 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 an application for a writ of certiorari in the Superior Court of DeKalb County within thirty (30) days after the final action on a complaint pursuant to this article. The filing of such application 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, be amended to amend the definition of the following term, as follows:*

\* \* \*

**Sec. 20-1: Definitions**

*Protected class or classes* shall have the same meaning as that term is defined in section 1-2 of this Code, now and as may be hereafter amended.

\* \* \*

*Chapter 20 of the Code of DeKalb County, as Revised 1988, be further amended by deleting subsection (b) of section 20-16; section 20-68; and section 20-194 in their entirety and substituting in lieu thereof the following new sections 20-16(b); 20-68 and 20-194 to read as follows:*

\* \* \*

**Sec. 20-16. Equal opportunity employment.**

There shall be no discrimination against applicants or employees on the basis of the real or perceived inclusion or exclusion of such person in a Protected Class as defined in section 1-2 of this Code, or other non-merit 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 particular requirement factor 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 the real or perceived inclusion or exclusion of such person in a Protected Class as defined in section 1-2 of this Code, may appeal to the chief executive or the chief executive's designee. Such charge 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 chief executive or the chief executive's designee shall investigate the alleged discriminatory action, and the chief executive's decision shall be binding.

**Sec. 20-194.**

Any employee who believes unjust discrimination has been exercised with respect to any disciplinary action because of the real or perceived inclusion or exclusion of such person in a Protected Class, 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 discrimination, including specifying the dates, times, places, and specific types 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 error of fact or was motivated by intentional discrimination against the employee because of

membership in a protected class listed in this section. The same provisions relative 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 upon 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, nor 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 \_\_\_\_\_ 2021.

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**STEPHEN R. BRADSHAW**  
 Presiding Officer  
 Board of Commissioners  
 DeKalb County, Georgia

**APPROVED** by the Chief Executive Officer of DeKalb County, this \_\_\_\_\_ day of \_\_\_\_\_ 2021.

\_\_\_\_\_  
**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

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**ZACHARY L. WILLIAMS**  
Chief Operating Officer  
DeKalb County, Georgia