



City of North Port

ORDINANCE NO. ~~2015-47~~ 2017-01

AN ORDINANCE OF THE CITY OF NORTH PORT, FLORIDA, ~~CREATING~~ AMENDING CHAPTER 16, HUMAN RIGHTS ACT OF THE CITY OF NORTH PORT CITY CODE, SECTION 16.01 PURPOSE AND INTENT, SECTION 16.02 DEFINITIONS, SECTION 16.03 GENERAL DISCRIMINATORY PRACTICES, 16.04 PRIVATE CAUSES OF ACTION, 16.05 SOVEREIGN IMMUNITY; NO WAIVER OF RIGHTS OR REMEDIES AT LAW, 16.06 REMEDIES PROHIBITING ACTS OF DISCRIMINATION – EMPLOYMENT, REPEALING SECTION 16.07 PROHIBITED ACTS OF DISCRIMINATION – HOUSING AND REAL ESTATE TRANSACTIONS, SECTION 16.08 PROHIBITED ACTS OF DISCRIMINATION – BUSINESS ESTABLISHMENT OR PUBLIC ACCOMODATIONS, SECTION 16.09 PROHIBITED ACTS OF DISCRIMINATION – EDUCATIONAL INSTITUTION, ~~SECTION 16.10 GENERAL EXCEPTIONS~~, PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, this amendment is being considered primarily to include Veteran's Status and Pregnancy into the Human Rights Ordinance (2015-47) passed and adopted by the North Port City Commission the 27th day of October, 2015; and

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WHEREAS, Veteran's Status, Pregnancy, Citizenship, Familial Status, Genetic Information, and Handicap are categories of protected classes that were omitted from ordinance 2015-47; and

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WHEREAS, the intent of this ordinance as amended is to prohibit all forms of discrimination; and

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WHEREAS, the ordinance as amended is consistent with attorney fee provisions in Florida Statutes §57.105; and

WHEREAS, The North Port City Commission is concerned about protecting and safeguarding the rights and opportunity of all individuals to be free from all forms of discrimination, including discrimination based on age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, gender identity or expression, or physical characteristic; and

~~WHEREAS, The North Port City Commission promotes the public health and welfare of all individuals who live in, visit, and work in the City of North Port; and~~

~~WHEREAS, The City Commission desires to ensure that all individuals within the City of North Port have equal access to employment, housing, and public accommodations;~~

~~WHEREAS, The City of North Port Human Rights Ordinance is intended to reinforce and supplement the Federal Civil Rights Act of 1964, the Federal Civil Rights Act of 1968, the Florida Civil Rights Act and all similar local, state and federal laws regarding discrimination and discriminatory practices.~~

NOW, THEREFORE BE IT ORDAINED by the City of North Port City Commission:

SECTION 1. HUMAN RIGHTS

1.01 Chapter 16 of the Code of the City of North Port is hereby ~~created~~ amended as:

Chapter 16. – Human Rights

SECTION 2. PURPOSE AND INTENT.

2.01 Chapter 16, Section 16.01 of the Code of the City of North Port is hereby ~~created~~ amended as:

Sec. 16.01. - Purpose and intent.

- a) It is the desire of the City Commission to foster and encourage the growth and development of the City of North Port in a manner that will ensure all ~~individuals~~ Citizens an equal opportunity to live free of discrimination imposed by age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, gender identity or expression, ~~or~~ physical characteristic, pregnancy, genetic information, handicap, creed, ancestry, or veterans status; and that discriminatory practices are contrary to the public policy of the City of North Port and are a menace to the public health and welfare of our citizens. ~~and, as such, the commission shall direct its efforts toward eliminating discriminatory practices within the City of North Port in the areas of employment, housing, and public accommodations where they exist;~~ and
- b) The general purpose of this chapter is to secure for all ~~individuals~~ Citizens within the City of North Port freedom from discrimination because of age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, gender identity or expression, ~~or~~ physical characteristic, pregnancy, genetic information, handicap, creed, ancestry, or veterans status and thereby to protect their interest in personal dignity, to make the City of North Port secure against strife and unrest, to preserve the public safety, health, and general welfare, and to promote the interests, rights, privileges of ~~individuals~~ Citizens within the City of North Port, and, in an effort to accomplish this purpose, to create a private cause of action to all ~~individuals~~ Citizens in the City of North Port against such discriminatory practices.

SECTION 3. DEFINITIONS.

3.01 Chapter 16, Section 16.02 of the Code of the City of North Port is hereby ~~created~~ amended as:

Sec. 16.02. - Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them, except where the context clearly indicates a different meaning:

Age means any person 40 years or older.

Ancestry refers to the country, nation, tribe or other identifiable group of people from which a person descends. It can also refer to the physical, cultural or linguistic characteristics of the person's ancestors.

Color refers to a person's skin color.

Citizen refers to all person born or naturalized in the United States.

Creed refers to a system of belief, principles or opinions.

Disability or disabled means, with respect to an individual: A-a physical or mental impairment; a record of such an impairment; or being regarded as having such an impairment.

Discriminate, discrimination or discriminatory means treating someone less favorably because of his or her any act, policy, advertisement or practice which, regardless of intent, has the effect of subjecting any person to differential treatment as a result of that person's actual or perceived age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientations, gender identity or expression, or physical characteristic, pregnancy, genetic information, handicap, creed, ancestry, or veterans status. Discrimination also includes any differential treatment because of one's association with a person or group of people identified herein.

Educational institution means any public or private educational institution and any business, nursing, professional, secretarial, and technical or vocational school.

Employee means any individual employed or seeking employment from an employer.

Employer means any person who, for compensation, regularly employs five or more individuals, not including the employer's parents, spouse or children. For purposes of this article an "employer" is also any person acting on behalf of an employer, directly or indirectly, or any employment agency.

Familial Status means one or more individuals (who have not attained the age of 18 years) being domiciled with (a) a parent or another person having legal custody of such individual or individuals; or (b) the designee of such parent or other person having such custody with the written permission of such parent or other person.

Gender identity or expression means a person's gender-related self-identity, appearance, expression or behavior, regardless of the person's assigned sex at birth.

Genetic Information means information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about the manifestation of a disease or disorder in an individual's family members (i.e. family medical history)

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Handicap refers a mental or physical impairment that significantly limits one's abilities.

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Marital Status is the condition of being married or unmarried.

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National Origin refers to a person's, or his or her ancestor's, country of birth.

~~Person means any natural person, firm, corporation, partnership or other organization, association or group of persons however arranged.~~

Physical characteristic means a bodily condition or bodily characteristic of any person which is from birth, accident, or disease, or from any natural physical development, or any other event outside the control of that person including individual physical mannerisms, height or weight.

Pregnancy means the condition of being pregnant.

~~Place of public accommodation means all establishments within the City of North Port which offer goods, services, accommodations or entertainment to the public. A place of public accommodation does not include any institution or club which by its nature is distinctly private.~~

Race refers to a group of people united or classified together based on a common history, nationality or geography

Religion means a particular system of faith or worship.

Sex refers to a person's gender

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Sexual orientation means a person's actual or perceived heterosexuality, homosexuality, or bisexuality.

Veteran's Status means a person who served in the active military, naval, or air service and who was discharged or released under honorable conditions only or who later received an upgraded discharge under honorable conditions, notwithstanding any action by the United States Department of Veterans Affairs on individuals discharged or released with other than honorable discharges.

SECTION 4. GENERAL DISCRIMINATORY PRACTICES.

4.01 Chapter 16, Section 16.03 of the Code of the City of North Port is hereby ~~created~~ amended as:

Sec. 16.03. - General discriminatory practices.

In addition to those discriminatory practices made unlawful by this chapter, the following discriminatory practices shall be unlawful:

- (1) It shall be unlawful for a person to retaliate or discriminate in any manner against an ~~individual~~ a Citizen because such ~~individual~~ Citizen opposed a practice prohibited by this chapter or prohibited by existing federal or state law prohibiting discrimination; or to retaliate or discriminate in any manner against ~~an individual~~ a Citizen because such ~~individual~~ Citizen has filed a complaint, testified, assisted or participated in any manner

in any investigation, proceedings, hearing or conference under this chapter or under any federal or state law prohibiting discrimination.

- (2) It shall be unlawful to coerce, intimidate, threaten or interfere with any [individual Citizen](#) in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other [individual Citizen](#) in the exercise or enjoyment of, any right granted or protected by this chapter.

SECTION 5. PRIVATE CAUSES OF ACTION; REMEDIES.

5.01 Chapter 16, Section 16.04 of the Code of the City of North Port is hereby ~~created as~~ [amended as](#):

Sec. 16.04. – Private causes of action; remedies.

- (a) An aggrieved [individual Citizen](#) may, under this chapter, commence a civil action in a court of competent jurisdiction against the person alleged to have committed a discriminatory practice; provided, however, that such civil action must be filed no later one (1) year after the discriminatory practice is alleged to have been committed.
- (b) If, in a civil action commenced under this chapter, the court finds that a discriminatory practice has been committed or is about to be committed, the court may issue an order prohibiting the discriminatory practice and providing affirmative relief from the effects of the discriminatory practice including, but not limited to, a temporary or permanent injunction or other equitable relief, a temporary restraining order, an award of actual damages, including back pay, punitive damages, an award of reasonable attorney's fees, interest, and costs, or other such relief as the court deems appropriate.
- (c) [In any civil action commenced under this chapter, upon the court's initiative or motion of any party, the court shall award reasonable attorney fees pursuant to Florida Statutes §57.105.](#)

~~With regard to attorney's fees, sanctions for raising unsupported claims or defenses, service of motions, and damages for delay of litigation, F.S. (2010) § 57.105, or as such section may thereafter be amended, is hereby adopted as follows:~~

- ~~(1) In any civil action commenced under this chapter, upon the court's initiative or motion of any party, the court shall award a reasonable attorney's fee to be paid to the prevailing party in equal amounts by the losing party and the losing party's attorney on any claim or defense at any time during a civil proceeding or action in which the court finds that the losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial:~~
- ~~a. Was not supported by the material facts necessary to establish the claim or defense; or~~
- ~~b. Would not be supported by the application of then-existing law to those material facts.~~

~~However, the losing party's attorney is not personally responsible if he or she has acted in good faith, based on the representations of his or her client as to the~~

~~existence of those material facts. If the court awards attorney's fees to a claimant pursuant to this subsection, the court shall also award prejudgment interest.~~

~~(2) Paragraph (1)b. does not apply if the court determines that the claim or defense was initially presented to the court as a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law, as it applied to the material facts, with a reasonable expectation of success.~~

~~(3) At any time in any civil proceeding or action in which the moving party proves by a preponderance of the evidence that any action taken by the opposing party, including, but not limited to, the filing of any pleading or part thereof, the assertion of or response to any discovery demand, the assertion of any claim or defense, or the response to any request by any other party, was taken primarily for the purpose of unreasonable delay, the court shall award damages to the moving party for its reasonable expenses incurred in obtaining the order, which may include attorney's fees, and other loss resulting from the improper delay.~~

~~(4) A motion by a party seeking sanctions under this section must be served but may not be filed with or presented to the court unless, within twenty-one (21) days after service of the motion, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected.~~

~~(5) In administrative proceedings under F.S. (2010) ch. 120, or as such chapter may thereafter be amended, an administrative law judge shall award a reasonable attorney's fee and damages to be paid to the prevailing party in equal amounts by the losing party and a losing party's attorney or qualified representative in the same manner and upon the same basis as provided in subsections (1) through (4). Such award shall be a final order subject to judicial review pursuant to F.S. (2010) § 120.68, or as such section may thereafter be amended. If the losing party is an agency as defined in F.S. (2010) § 120.52(1), or as such section may thereafter be amended, the award to the prevailing party shall be against and paid by the agency. A voluntary dismissal by a nonprevailing party does not divest the administrative law judge of jurisdiction to make the award described in this subsection.~~

~~(6) The provisions of this section are supplemental to other sanctions or remedies available under law or under court rules.~~

SECTION 6. SOVEREIGN IMMUNITY; NO WAIVER OF RIGHTS OR REMEDIES AT LAW.

6.01 Chapter 16, Section 16.05 of the Code of the City of North Port is hereby ~~created as~~ amended as:

Sec. 16.05. – Sovereign immunity; no waiver of rights or remedies at law.

(a) ~~Pursuant to Article X, Section 13, Florida Constitution, nothing~~ Nothing in this chapter shall be deemed to be a provision for bringing suit against the state, city, county or local government or otherwise be deemed to be a waiver of sovereign immunity.

(b) Nothing in this chapter shall be construed to prohibit any sovereignly immune entity from adopting its own internal policies and rules to prohibit discriminatory practices and acts and to resolve allegations or complaints of such discriminatory practice and acts to the extent allowed by law. The City of North Port specifically adopts this chapter as applicable to the government of the City of North Port.

- (c) This chapter shall be applicable within the jurisdictional boundary of the City of North Port.
- (d) Nothing in this chapter shall be deemed to modify, impair, or otherwise affect any other right or remedy conferred by the constitution or laws of the United States or the State of Florida, and the provisions of this chapter shall be deemed to be in addition to those provided by such other laws.

SECTION 7. PROHIBITED CONDUCT

7.01 Chapter 16, Section 16.06 of the Code of the City of North Port is hereby amended as:

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Sec. 16.06 – Prohibited conduct.

It shall be unlawful for any Citizen to discriminate against another Citizen because of age, race, color, religion, national origin, disability, marital status, familial status, sex, sexual orientation, gender identity or expression, or physical characteristic, pregnancy, genetic information, handicap, creed, ancestry, or veteran's status.

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SECTION 7. PROHIBITED ACTS OF DISCRIMINATION – EMPLOYMENT.

~~7.01 Chapter 16, Section 16.06 of the Code of the City of North Port is hereby created as:~~

~~Sec. 16.06 – Prohibited act of discrimination – employment.~~

~~With regard to employment, it shall be unlawful for any employer or labor organization, to engage in any of the following acts, wholly or partially for a discriminatory reason:~~

- ~~a) To discriminate against any individual, with respect to failure to hire, refusal to hire, discharge, compensation, terms, conditions, or privileges of employment, including promotion; however nothing in this subsection shall be construed to require any employer to provide benefits, such as insurance, to individuals not employed by the employer;~~
- ~~b) To limit, segregate, or classify employees in any way which would deprive or tend to deprive any employee of employment opportunities, or which would otherwise tend to adversely affect his or her status as an employee; or~~
- ~~c) To fail or refuse to refer for employment, or to give negative discriminatory information to a potential employer of any individual, in such a manner that would deprive or limit an individual's employment opportunities or that would otherwise adversely affect an individual's status as an applicant or prospective employee.~~

SECTION 8. PROHIBITED ACTS OF DISCRIMINATION – HOUSING AND REAL ESTATE TRANSACTIONS.

~~8.01 Chapter 16, Section 16.07 of the Code of the City of North Port is hereby ~~created~~ repealed as:~~

~~Sec. 16.07 – Prohibited act of discrimination – housing and real estate transactions.~~

~~With regard to housing and real estate transactions, it shall be unlawful to engage in any of the following acts wholly or partially for a discriminatory reason:~~

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~~a) To discriminate by impeding, delaying, discouraging, imposing different terms, or otherwise limiting or restricting any transaction in real estate;~~

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~~b) To discriminate in the terms and conditions, or in performing, or refusing to perform, any act necessary to determining an individual's financial ability to engage in a real estate transaction or to represent falsely that an interest in real estate is not available for transaction; or~~

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~~c) For a property manager to discriminate by refusing to provide equal treatment of, or services to, occupants or potential occupants of any real estate which he or she manages.~~

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~~It shall not be an unlawful discriminatory practice for an owner, lessor or renter to refuse to rent, lease or sublease a portion of a single family dwelling unit where it is anticipated that the owner, lessor or renter will be occupying any portion of the single family dwelling.~~

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SECTION 9. PROHIBITED ACTS OF DISCRIMINATION – BUSINESS ESTABLISHMENT OR PUBLIC ACCOMODATIONS.

9.01 Chapter 16, Section 16.08 of the Code of the City of North Port is hereby ~~created~~ repealed as:

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~~Sec. 16.08 – Prohibited act of discrimination – business establishment or public accommodations.~~

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~~It shall be unlawful for a business establishment or place of public accommodation to deny, directly or indirectly, any person the full enjoyment of the goods, services, facilities, privileges, advantages, and accommodations wholly or partially for a discriminatory reason.~~

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SECTION 10. PROHIBITED ACTS OF DISCRIMINATION – EDUCATIONAL INSTITUTION.

10.01 Chapter 16, Section 16.09 of the Code of the City of North Port is hereby ~~created~~ repealed as:

~~Sec. 16.09 – Prohibited act of discrimination – educational institution.~~

~~It shall be unlawful for an educational institution to engage in any of the following acts wholly or partially for a discriminatory reason: To deny, restrict, abridge or condition the use of, or access to, any educational facilities or educational services to any person otherwise qualified.~~

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SECTION 11. GENERAL EXCEPTIONS.

11.01 Chapter 16, Section 16.10 of the Code of the City of North Port is hereby ~~created~~ left unchanged as:

Sec. 16.10 - General exceptions.

- (a) It shall not be an unlawful discriminatory practice for an employer to observe the conditions of a bona fide seniority system or a bona fide employee benefit system based on age such as a retirement, pension or insurance plan which is not a subterfuge or pretext to evade the purpose of this article.

- (b) Nothing contained in this article shall be deemed to prohibit selection or rejection based solely upon a bona fide occupational qualification, a bona fide physical requirement, or, as to a religious or denominational institution, based upon a preference for applicants of the same religion or denomination.

SECTION 12. SEVERABILITY

If any section, subsection, sentence, clause, or provision of this ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such section, subsection, sentence, clause, or provision shall be deemed a separate, distinct, and independent section, subsection, sentence, clause, or provision and such holding shall not affect the validity of the remaining sections, subsections, sentences, clauses, or provisions.

SECTION 13. EFFECTIVE DATE

All portions of this Ordinance shall become effective immediately upon adoption.

READ BY TITLE ONLY at first reading by the City Commission of the City of North Port, Florida in public session this ____ day of _____, ~~2015~~2017.

PASSED AND DULY ADOPTED on the second and final reading in public session by the City Commission of City of North Port, Florida this ____ day of _____, ~~2015~~2017.

CITY OF NORTH PORT, FLORIDA

~~RHONDA Y. DIFRANCO~~ LINDA YATES,
MAYOR

ATTEST:

~~HELEN M. RAIMBEAU~~ PATSY ADKINS, MMC
CITY CLERK

Approved as to form and correctness:

MARK MORIARTY
CITY ATTORNEY

Ordinance No. [2015-47](#) [2017-01](#)