

**SPONSOR: COMMISSIONER LARRY SCHLESINGER
MAYOR PRO TEM AL TILLMAN
COMMISSIONER ELAINE LUCAS
COMMISSIONER VIRGIL WATKINS**

AN ORDINANCE OF THE MACON-BIBB COUNTY COMMISSION TO AMEND ARTICLE III OF CHAPTER 2 OF THE MACON-BIBB COUNTY CODE OF ORDINANCES, NOW RESERVED, FOR THE PURPOSE OF ESTABLISHING PROTECTIONS AGAINST DISCRIMINATION IN PLACES OF PUBLIC ACCOMMODATION; AND FOR OTHER LAWFUL PURPOSES.

WHEREAS, the Macon-Bibb County Commission wishes to amend Article III of Chapter 2, now reserved, to entitled the same as “Article III. - DISCRIMINATION,” and to amend certain sections of the Macon-Bibb County Code of Ordinances, as provided herein; and

WHEREAS, the ordinance contained herein would benefit and promote the health, safety, morals, and welfare of the citizens of Macon-Bibb County;

NOW, THEREFORE, BE IT ORDAINED by the Macon-Bibb County Commission and it is hereby so ordained by the authority of the same that:

SECTION 1.

Article III of Chapter 2 of the Macon-Bibb County Code of Ordinances, now reserved, is hereby repealed in its entirety and replaced with the following:

Chapter 2 – ADMINISTRATION

ARTICLE III. – DISCRIMINATION

Sec. 2-51. – Definitions.

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

Business means any person or entity conducting business within the County, which is required to obtain a business license or permit. For purposes of this article, no department of any government agency shall be considered to be a business (notwithstanding licensure by the County).

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 of or trades 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 which is leased, subleased, or otherwise granted for a consideration the right to occupy the premises where not owned by the occupant.

Employee means any person employed by or seeking employment from any business within Macon-Bibb County. Employee does not include any individual employed by such individual's parents, spouse, or child.

Person means an individual, corporation, partnership, association, labor organization, legal representative, mutual company, joint-stock company, trust, unincorporated organization, trustee, trustee in bankruptcy, receiver, and fiduciary.

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.

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

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

Military status means a person who is serving or has served in the uniformed services, and who was discharged or released under conditions other than dishonorable, as specified in 38 U.S.C. 101(2), or amendments thereto. Uniformed services is defined as set forth in 20 C.F.R. 1002.5(o), or amendments thereto.

Hearing officer means a person chosen as described in Sec. 2-54 who is charged with determining the validity of alleged violations of this article, and upon determining that a violation has occurred, assessing appropriate 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 Sec. 2-53.

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, that is not required to file IRS Form 990, Return of Organization Exempt From Income Tax, under any circumstances.

Sec. 2-52. – Unlawful practices.

- (a) It shall be an unlawful, discriminatory practice for a business, because of the race, religion, color, sex, disability, national origin, ancestry, sexual orientation, gender identity or military status of any person to refuse to hire or employ such person, to bar or discharge such person from employment, or to otherwise discriminate against such person in compensation or in terms, conditions, or privileges of employment; to limit, segregate, separate, classify or make any distinction in regards to employees; or to follow any employment procedure or practice which, in fact, results in discrimination, segregation, or separation.
- (b) 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 race, religion, color, sex, disability, familial status, national origin, ancestry, sexual orientation, gender identity or military status, or to discriminate against any person in such person's use or occupancy of rental housing because of the race, religion, color, sex, disability, familial status, national origin, ancestry, sexual orientation, gender identity, or military status of the people with who such person associates.
- (c) 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 race, religion, color, sex, disability, national origin, ancestry, sexual orientation, gender identity, or military status.
- (d) Nothing in this article shall be construed to mean that a business shall be forced to hire unqualified and/or incompetent personnel or discharge qualified and/or competent personnel.

- (e) Nothing in this article shall prohibit an employer from requiring an employee, during the employee's hours at work, to adhere to reasonable and equitable dress and/or grooming standards not prohibited by other provisions of Federal, State, or local law, provided that all employees are permitted to dress in a manner consistent with their gender identity.
- (f) Nothing in this article shall prohibit a religious organization to employ an individual of a particular religion to perform work connected with the performance of religious activities by the religious organization. Nor shall this article prohibit a religious organization from limiting its non-commercial accommodations, advantages, facilities, membership, and privileges to persons of the same religion.
- (g) Nothing in this article shall prohibit a nonprofit private club in fact not open to the public, which as 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.
- (h) 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. 2-53. – Enforcement.

- (a) Any person aggrieved by a potential violation of this Article may file a Complaint with the Clerk of Commission 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 \$75.00 shall be paid by the Complainant contemporaneously with the filing of all discrimination Complaints. Each Complaint must be verified.
- (b) Upon receipt of a Complaint under this Article, the Clerk of Commission will transmit a copy of the Complaint to the County Attorney and to the County Manager.
- (c) The County Attorney shall cause the Complaint to be served on the person charged with a violation as soon as practicable. Service may be by personal service, by certified mail, return receipt requested, or by statutory overnight delivery.
- (d) The alleged violator shall have fifteen (15) days from the date of service to file an Answer to the Complaint, however, the alleged violator shall have no obligation to file an Answer to any Complaint.

- (e) The Complaint shall first be referred to a mediator for non-binding mediation. The Complaint must be referred to a mediator no sooner than fifteen (15) days and no later than forty-five (45) days after the Answer period provided in the foregoing subsection (c). Participation in mediation shall be voluntary for both parties. The mediator shall be 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, and if so that manner shall be placed in writing and signed by both parties. In no circumstance shall the costs of mediation be borne by the County.
- (f) Any mediation hereunder shall be conducted in accordance with procedures to be established by the mediator.
- (g) If the matter is not conclusively resolved through mediation, or if either party elects not to participate in mediation, the Complaint shall be referred to a Hearing Officer as per Section 2-54.

Sec. 2-54. – Appointment of hearing officer; 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, and
 - (ii) shall have at least five (5) years' experience in the practice of law,

The County Attorney shall maintain a list 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. If the voluntary mediation provided for in the foregoing Sec. 2-53 does not conclusively resolve the matter, or if either party elects not to participate in mediation, the County Attorney shall draw names randomly from the list of qualified Hearing Officers and appoint the first one 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 to establish a violation under this Ordinance shall be based on a preponderance of the evidence.

Sec. 2-55. – Hearing.

- (a) Upon receiving the file from the County Attorney, the Hearing Officer shall review the Complaint to determine whether it is in conformity with the requirements of Section 2-53.

If the Complaint is in conformity with the requirements of Sec. 2-53, the Hearing Officer shall then determine whether (i) upon consideration of the Complaint and Answer, the Complaint is unjustified, frivolous, or patently unfounded, or (ii) whether upon consideration of the Complaint and Answer, the Complaint demonstrates facts sufficient to invoke disciplinary jurisdiction as set forth in this ordinance.

- (b) If the Complaint fails based upon the requirements of the foregoing subsection (a), the Complaint shall be dismissed and the Hearing Officer shall state in writing the basis for dismissal.
- (c) Upon a determination that the Complaint should not be dismissed pursuant to the foregoing subsection (b), the Hearing Officer shall be empowered to collect evidence and information concerning any Complaint and to add the findings and results of investigations to the file containing such Complaint. In furtherance of this investigation, the Hearing Officer shall conduct a hearing regarding the allegations set forth in the Complaint. At the hearing, both the alleged violator who is the subject of inquiry, and the person filing the Complaint, shall have the right: (a) to representation by counsel at all stages of these proceedings, (b) to written notice of the hearing at least fourteen (14) calendar days before the hearing via mail to the person's last known address, (c) to hear and examine the evidence and witnesses, (d) to not testify, and (e) to submit evidence and call witnesses to oppose or mitigate the allegations. In all hearings held under this section, formal legal rules of evidence shall not be strictly applied. Evidence may be admitted if it is of a type commonly relied upon by reasonably prudent people in the conduct of their affairs. The hearing offer shall follow the Georgia Rules of Evidence regarding privileges recognized by state law.
- (d) All hearings under this section shall be completed within thirty (30) days of the date on which the Hearing Officer received the file from the County Attorney. 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 disciplinary jurisdiction of Macon-Bibb County.
- (e) Within fifteen (15) days of the completion of the hearing, the Hearing Officer shall either:
 - i. Dismiss the Complaint on the grounds that it is unjustified, frivolous, patently unfounded, or that it fails to state facts sufficient to invoke the disciplinary jurisdiction of Macon-Bibb County, or
 - ii. Find that a violation of this article has occurred, and the Hearing Officer may apply a civil penalty in an amount up to \$500.00 for each violation.

- (f) 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 the circumstances warrant assessing the costs in some other manner.

Sec. 2-56. – 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 Bibb County within thirty (30) days after the final action on a Complaint pursuant to this Ordinance. The filing of such application shall act as supersedeas.

Sec. 2-57. – Not a required administrative remedy, does not preclude pursuit of claims through other available avenues.

This Article is not a required administrative remedy. Individuals are not obligated to pursue a claim under the article as a precursor to pursuing claims under applicable state or federal law. Individuals wishing to pursue claims through other available avenues are able to do so pursuant to state and federal law.

Secs. 2-58 through 2-65. – Reserved.

SECTION 2.

In accordance with Sec. 1-4(c) of the Code of Ordinances of Macon-Bibb County, Georgia, it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code of Ordinances of Macon-Bibb County, Georgia, and the sections of this Ordinance may be renumbered to accomplish such intention.

SECTION 3.

- (a) It is hereby declared to be the intention of the Macon-Bibb County Commission that all sections, paragraphs, sentences, clauses, and phrases of this Ordinance are and were, upon their enactment, believed by the Macon-Bibb County Commission to be fully valid, enforceable, and constitutional.

(b) It is hereby declared to be the intention of the Macon-Bibb County Commission that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Chapter is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. It is hereby further declared to be the intention of the Macon-Bibb County Commission that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this Ordinance is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this Ordinance.

(c) In the event that any phrase, clause, sentence, paragraph or section of this Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Macon-Bibb County Commission that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or sections of the Ordinance and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs, and sections of the Ordinance shall remain valid, constitutional, enforceable, and of full force and effect.

SECTION 4.

To the extent necessary, penalties in effect for violations of Chapter 1 of the Code of Ordinances, Macon-Bibb County, Georgia, at the time of the effective date of this Ordinance shall be and are hereby made applicable to this Ordinance and shall remain in full force and effect.

SECTION 5.

All Ordinances or parts of Ordinances in conflict with this Ordinance are, to the extent of such conflict, hereby repealed or set aside.

SECTION 6.

This Ordinance shall become effective immediately upon its approval by the Mayor or upon its adoption into law without such approval.

[SIGNATURES ON THE FOLLOWING PAGE.]

SO ORDERED AND ORDAINED this ____ day of _____, 2020.

Robert A.B. Reichert, Mayor

Attest: _____
JANICE S. ROSS, CLERK OF COMMISSION

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