

**INTERLOCAL AGREEMENT
REGARDING
ENFORCEMENT OF THE WAKE COUNTY NONDISCRIMINATION ORDINANCE IN
MUNICIPAL JURISDICTIONS**

This Interlocal Agreement is entered into among the **TOWN OF APEX, NORTH CAROLINA**; being a municipal corporation organized under the laws of the State of North Carolina (“Municipality”); and **WAKE COUNTY, NORTH CAROLINA** (the “County” or “Wake”), a public body politic and corporate of the State of North Carolina, Individually called a “Party” in this interlocal agreement and collectively called the “Parties.”

RECITALS:

WHEREAS, the County and Municipality welcome all people and recognize the importance of diversity and the importance of all people being free from discrimination based on race, natural hair or hairstyles, ethnicity, creed, color, sex, marital or familial status, sexual orientation, gender identity or expression, national origin or ancestry, pregnancy, National Guard or veteran status, religious belief or non- belief, age, or disability; and

WHEREAS, invidious discrimination and the tolerance of invidious discrimination is detrimental to the health, safety, and welfare of the citizens of the County and Municipality and the peace and dignity which the County and Municipality seek to promote for all of their residents; and

WHEREAS, on October 18, 2021, in accordance with G.S. 153A-121, the Wake County Board of Commissioners enacted a Non-Discrimination Ordinance (Sections 34-01 – 34.08 of the Wake County Code of Ordinances) (“Wake NDO” or “NDO”) effective within the jurisdictional limits of the County to promote principles of diversity, inclusion, harmony, and equal treatment for all and thereby the health, safety, and welfare of those who live in, work in, and visit the County as well as to promote the peace and dignity of the County; and

WHEREAS, the Wake NDO states that municipalities located within the County may adopt the Wake NDO provided they enter into an interlocal agreement that establishes enforcement procedures; and

WHEREAS, pursuant to N.C.G.S. § 153A-122, the respective governing body of the Municipality has enacted a resolution adopting the Wake NDO within their territorial jurisdiction; and

WHEREAS, pursuant to N.C.G.S. §160A-174(a), “[a] city may by ordinance define, prohibit, regulate, or abate acts, omissions, or conditions detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the city[;]” and

WHEREAS, County and the Municipality agree that the Parties should collaborate in their efforts to eradicate discrimination and that a coordinated approach in combatting discrimination in public accommodations and employment advances those goals; and

WHEREAS, the County Manager for the County and the Town Manager for the Municipality have conferred concerning enforcement of the Wake NDO within the corporate limits of the Municipality and this interlocal agreement describes the rights and responsibilities of each Party; and

WHEREAS, the Parties desire to centralize the non-discrimination complaint process and procedure established by the County for improved consistency and accountability; and

WHEREAS, the Parties desire to enter into this Agreement pursuant to the statutory authority authorizing interlocal agreements, N.C.G.S §§ 160A-460 to 160A-464, in order to pursue the above-stated goals.

NOW THEREFORE, for and in consideration of the premises and covenants contained in the Agreement, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I Definitions

1.01. Definitions: For all purposes of this Agreement, unless the context requires otherwise, the following terms shall have the following meanings:

Agreement means this Interlocal Agreement.

Complaint means a written allegation of discrimination filed on the County's adopted complaint form in accordance with the Wake NDO.

Complainant means a Person as defined under the Wake NDO who files a Complaint.

Conciliation means attempted resolution of issues raised by a complainant through informal means not involving court process.

Discrimination means any difference in treatment based on a Protected Class as defined herein.

Employer means any person employing one or more persons within the County or within the corporate limits of the Municipal Party and any person acting in the interest of an Employer, directly or indirectly, including an employment agency. "Employer" shall include Wake County and any Wake County Contractor.

Gender identity or expression means having or being perceived as having gender-related identity, expression, appearance, or behavior, whether or not that identity, expression, appearance, or behavior is different from that traditionally associated with the sex assigned to that individual at birth.

Municipality means the municipal party named Municipal Party in this Agreement.

Party means the municipality or Wake County, as the context or the usage of such term may require, which is a signatory to this Interlocal Agreement.

Person means a natural person, a corporation, company, partnership, firm, association or other entity with a separate legal existence.

Protected class means race, natural hair or hairstyles, ethnicity, creed, color, sex, pregnancy, marital or familial status, sexual orientation, gender identity or expression, national origin or ancestry, marital or familial status, pregnancy, National Guard or veteran status, religious belief or non-belief, age, or disability.

Protected hairstyle means any hairstyle, hair type, or hair texture historically

associated with race such as, but not limited to, braids, locks, twists, tight coils or curls, cornrows, Bantu knots, and afros.

Public accommodation means any place, facility, store or other establishment which supplies accommodations, goods, or services to the public or which solicits or accepts the patronage or trade of the general public. A public accommodation shall not include a Religious Organization and all of the activities of the Religious Organization, or non-profit fraternal or social organization which restricts use of facilities and services to members and their guests.

Religious Organization means a church, mosque, synagogue, temple, non-denominational ministry, faith-based mission or faith-based entity that is primarily devoted to the study, practice, or advancement of religion.

Respondent means a Person as defined under the Wake NDO against whom a complaint has been filed pursuant to the Wake NDO.

ARTICLE II

Purpose, Process & Responsibilities

2.01. Recitals; Purpose: The Recitals are incorporated herein. The Parties agree to centralize all non-discrimination complaints that arise from the Wake NDO received in their respective jurisdictions in one online portal system managed by the County.

2.02. Roles and Responsibilities of the Parties:

(A) The County shall:

1. Provide a Complaint form available to persons and members of the public.
2. Establish and maintain an online portal for the intake of Complaints filed within the jurisdictional limits of the County and the jurisdictional limits of the Municipal Parties.
3. Perform jurisdictional review of all Complaints received in accordance with the provisions of the Wake NDO and this Agreement and issue letters of denial or referral for Conciliation.
4. Provide administrative personnel to perform work under this Agreement.
5. Contract with third parties for the administration of the investigatory and conciliation process established in the Wake NDO.
6. Collect fees from the Municipality as set out in this Agreement.
7. Cooperate and use best efforts to ensure that the various provisions of this Agreement are fulfilled.

(B) The Municipal Party shall:

1. Coordinate with the County following the County's receipt of any Complaint falling within their jurisdictional limits.
2. Assist the County in determining whether a Complaint falls within the jurisdiction of the Municipality.

3. Compensate the County for administrative costs and fees as set out in this Agreement.
4. Cooperate and use best efforts to ensure that the various provisions of this Agreement are fulfilled.

2.03. Process: All Complaints regarding alleged violations of the Wake NDO must be filed with the County Manager's Office within ninety (90) days of the alleged discriminatory act on the Complaint form provided by the County in accordance with the criteria set forth therein. Upon review of the Complaint, the County Manager, or his designee, shall determine if the Complaint falls within the jurisdiction of the County or the Municipality and make a recommendation for one or more of the following actions:

- 1) No further action based on lack of jurisdiction, whether territorial or subject matter jurisdiction, or
- 2) An opportunity for the Complainant and the Respondent to participate in Conciliation to resolve the dispute. The County shall be responsible for communicating the recommended action to the Complainant upon intake and review of the Complaint.

In all cases where the County recommends Conciliation, the County shall offer the Complainant and the Respondent an opportunity to participate in a conciliation process, free of charge. The Complainant and Respondent may, but are not required, to be represented by counsel, but they shall be responsible for their own fees or expenses related to representation, preparation or attendance. The Conciliation session shall be a closed, informal, and confidential process to the extent permitted by law. All resolutions of Complaints shall be reduced to writing, signed by the Complainant and Respondent, and acknowledged by the facilitator of the Conciliation. The memo of conciliation shall be enforceable as a binding contract between the Complainant and the Respondent.

All jurisdictional determinations and Conciliations facilitated by the County are final, with no right to appeal by the Complainant or the Respondent.

The County shall not be responsible for advising a Complainant or a Respondent of available alternatives to Conciliation.

2.04. Authority: In accordance with N.C.G.S. § 160A-463, County employees who are carrying out functions described in this Agreement shall possess and exercise all of the authority that the law permits an employee of the Municipality to possess and exercise.

2.05. Limitations: This Agreement does not require the County or the Municipality to take any action on behalf of a Complainant or Respondent. Nothing herein shall require the County to initiate judicial action by or on behalf of any Complainant or the Municipality, including but not limited to injunctive relief or any other equitable remedy under law. The Parties understand that the conciliation process established by the Wake NDO is voluntary and non-penal in nature. The County's role under the Wake NDO is to encourage and facilitate resolution of Discrimination among Protected Classes occurring in Employment or Places of Accommodation. Nothing in this Agreement requires the County or the Municipality to take any action other than that specified in this Agreement.

Nothing in this Agreement shall be interpreted or applied so as to create any requirement, power, or duty in conflict with the Wake NDO.

The Wake NDO does not create any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the County, the Municipality, their agencies, departments or any other officers, elected officials, or employees or any other person or entity, including respondents.

Nothing in this Agreement precludes a Complainant from filing any action allowed by law, but the Complainant must bear the Complainant's own costs, expenses, and attorney's fees. A Complainant who wishes to file a court action must do so through the Complainant's own attorney or if appearing pro se, through the court's pro se clerk's office.

Nothing in this Agreement conveys rights to any person or entity that is not a party to this Agreement. Only the parties may enforce this Agreement.

2.06. Special Provisions Regarding Public Records: Nothing herein shall require the County to accept responsibility for responding to any public records request filed with the Municipality in association with this Agreement. Nothing herein shall require the Municipality to accept responsibility for responding to any public records request filed with the County in association with this Agreement. Notwithstanding the above, Wake County shall respond to all public records requests filed with the County for documents or materials in its possession. The parties acknowledge that electronic or written communication related to the Complaint or Conciliation in the custody of the County or the Municipality may be considered public record under North Carolina law. The Conciliation session shall not be recorded and shall remain confidential to the fullest extent allowed by law.

ARTICLE III

Administrative Fees, Costs, & Personnel

3.01. Collection of Fees: During the Term of this Agreement as set forth in section 4.02, below, the County will not assess an administrative fee for the services provided to the Municipality. The Municipality acknowledges and contemplates that a cost-share agreement may be required in the future.

3.02. Responsibility for Costs: The County agrees to provide all personnel, resources, and equipment to carry out the Purpose of this Agreement. Costs associated with these resources will be paid by the County.

3.03. Attorneys Fees: While either participant may engage legal counsel to assist in the process, the Complaint process is a voluntary attempt at Conciliation and as such there is no constitutional right to legal representation. If Complainant or Respondent choose to be represented by counsel, each shall be responsible for payment of attorney's fees incurred.

ARTICLE IV

Effective Date, Term, Termination, and Addition of Parties

4.01. Effective Date: This Agreement shall become effective for a Municipality on the earlier of the effective date of the Wake NDO or the execution date of this Agreement.

4.02. Term: The term of this Agreement shall commence on the Effective Date

and terminate on June 30, 2023, unless earlier terminated in accordance with Section 4.03. The County Manager shall have the authority to extend the term of this Agreement, subject to the appropriation of funds by the Wake County Board of Commissioners. The Town Manager shall have the authority to extend the term of this Agreement, subject to the appropriation of funds by the Town Council.

4.03. Termination: The Municipal Party shall have the right to withdraw or terminate participation in this Agreement upon 30-day notice to the County.

ARTICLE V Notice

5.01. Notice: Any written or electronic notice required by this Agreement shall be delivered to the Parties at the following addresses:

For the County:

Wake County Manager
Wake County Justice Center
301 S. McDowell St.
Raleigh, NC 27601
chris.dillon@wakegov.com

For the Municipality:

Town of Apex
Attn: Town Manager
PO Box 250
Apex, NC 27502
Catherine.crosby@apexnc.org

With a copy to the Municipal Attorney:

Town of Apex
Attn: Town Attorney
PO Box 250
Apex, NC 27502
Laurie.hohe@apexnc.org

ARTICLE VI Miscellaneous

6.01. Governing Law and Venue: The Parties agree that North Carolina law shall govern this Agreement. Venue for any disputes arising under this Agreement shall be in the Superior Court of Wake County, North Carolina.

6.02. Severability: If any provision of this Agreement shall be determined to be unenforceable by a court of competent jurisdiction, such determination will not affect any other provision of this Agreement.

6.03. Entire Agreement, Amendments: This Agreement constitutes the entire

Agreement between the Parties. This Agreement shall not be modified or amended except in writing signed by all the Parties.

6.04. Intentionally Omitted.

6.05. Liability of Officers and Agents: No officer, agent, or employee of either Party shall be subject to any personal liability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute this Agreement in their official capacities only, and not in their individual capacities. This section shall not relieve any such officer, agent, or employee from the performance of any official duty provided by law.

6.06. Assignment: Neither Party shall sell or assign or subcontract any interest in or obligation under this Agreement without the prior written consent of the other Party.

6.07. No Waiver Of Sovereign Immunity: Nothing in this Agreement shall be construed to mandate purchase of insurance by Wake County pursuant to N.C.G.S. 153A-435 or by the municipality pursuant to N.C.G.S. 160A-485; or to be inconsistent with Wake County's "Resolution Regarding Limited Waiver of Sovereign Immunity" enacted October 6, 2003; or to in any other way waive any Party's defense of sovereign or governmental immunity from any cause of action alleged or brought against a Party for any reason if otherwise available as a matter of law.

6.08. Intentionally Omitted.

6.09. Indemnity and Defense of Claims:

(A) Mutual Indemnity.

For the County. If allowed by North Carolina law and to the extent it does not operate as a waiver of sovereign immunity and is not inconsistent with County's "Resolution Regarding Limited Waiver of Sovereign Immunity", County shall indemnify and hold harmless the Municipality from and against all claims, demands, costs (excluding attorney's fees), and expenses arising out of or relating to County's obligations under this Agreement and caused by the negligence or willful misconduct of the County, its employees, its officials, its agents, or its contractors.

For the Municipality. If allowed by North Carolina law and to the extent it does not operate as a waiver of sovereign or governmental immunity and is not inconsistent with the Municipality's waiver policy concerning immunity, the Municipality shall indemnify and hold harmless the County from and against all claims, demands, costs (excluding attorney's fees), and expenses arising out of or relating to the Municipality's obligations under this Agreement and caused by the negligence or willful misconduct of the Municipality, its employees, its officials, its agents, or its contractors.

Notice Required. If a claim, suit, or cause of action is made against any Party hereto and the Party believes that they are entitled to indemnification, notice shall be given to the indemnitor within five (5) business days after that Party's first notice of any such claim, suit, or cause of action. Failure to provide this notice will preclude indemnity.

(B) Defense of Claims.

For the County. If the County is named as a party to a lawsuit or legal action relating to the Wake NDO, the County will bear all costs and expenses relating to the defense of that claim, except as provided in section 6.09(A) of this Agreement concerning indemnity.

For the Municipality. If the Municipality is named as a party to a lawsuit or legal action relating to the Wake NDO, the Municipality will bear all costs and expenses relating to the defense of that claim, except as provided in section 6.09(A) of this Agreement concerning indemnity.

Cooperation. If the County is named as a party to a lawsuit or legal action relating to its enforcement of the Wake NDO within the corporate limits of the Municipality and the County does not request that the Municipality take over its defense, the Municipality will provide informal assistance to the County and will confer with the County's attorneys about the potential to intervene or otherwise assist in the proceeding.

6.10. Real Property: This Agreement does not involve the acquisition or ownership of real property.

6.11. Breach and Default: In the event of breach of this Agreement, the Parties shall be entitled to such legal or equitable remedy as may be available, including specific performance.

6.12 Representations and Warranties: The Parties each represent, covenant and warrant for the other's benefit as follows:

(A) Each Party has all necessary power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement, and this Agreement has been authorized by Resolution spread upon the minutes of each Party's governing body. This Agreement is a valid and binding obligation of each Party.

(B) Each Party will comply with all non-discrimination requirements applicable to its activities.

(C) To the knowledge of each party, neither the execution and delivery of this Agreement, nor the fulfillment of or compliance with its terms and conditions, nor the consummation of the transactions contemplated by this Agreement, results in a breach of the terms, conditions and provisions of any agreement or instrument to which either Party is now a party or by which either is bound, or constitutes a default under any of the foregoing.

(D) To the knowledge of each Party, there is no litigation or other court or administrative proceeding pending or threatened against such Party (or against any other person) affecting such Party's rights to execute or deliver this Agreement or to comply with its obligations under this Agreement. Neither such Party's execution and delivery of this Agreement, nor its compliance with its obligations under this Agreement, requires the approval of any regulatory body or any other entity the approval of which has not been obtained.

6.13 Verification of Work Authorization; Iran Divestment Act Certification: The Parties, and all subcontractors, shall comply with Article 2, Chapter 64, of the North Carolina General Statutes. The Parties hereby certify that they, and all subcontractors, are not on the Iran Final Divestment List created by the North Carolina State Treasurer

pursuant to N.C.G.S. 147-86.58.

IN WITNESS WHEREOF, the parties, pursuant to resolutions of their respective governing boards spread upon their minutes, have caused this Agreement to be executed in their corporate names by their duly authorized officers, all as of the date first above written.

WAKE COUNTY

County Manager

ATTEST:

County Clerk

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Chief Financial Officer (or designee)
Wake County

Town of Apex

ATTEST:

Catherine Crosby, Town Manager

Town Clerk

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Chief Financial Officer (or designee)
Town of Apex