

**TOWN OF APEX, NORTH CAROLINA
ORDINANCE NO. 2021-0608-15**

AN ORDINANCE AMENDING TOWN CODE CHAPTER 3, “RESERVED”

WHEREAS, The Town of Apex is a community that respects and actively works to welcome and protect all those who reside, work, do business, and visit Apex; and

WHEREAS, The Town of Apex has determined that discrimination in the business dealings of its citizens harms the citizens and the Town and impairs the Town’s ability to attract new businesses and residents and is not consistent with the Town’s purpose, vision, and identity as a Town that embraces and celebrates diversity; and

WHEREAS, The Town of Apex finds that the 14th Amendment to the United States Constitution provides for the equal protection of all citizens; and

WHEREAS, pursuant to North Carolina General Statute §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, pursuant to North Carolina General Statute §160A-4, “[i]t is the policy of the General Assembly that the cities of this State should have adequate authority to execute the powers, duties, privileges, and immunities conferred upon them by law. To this end, the provisions of this Chapter . . . shall be broadly construed and grants of power shall be construed to include any additional and supplementary powers that are reasonably necessary or expedient to carry them into execution and effect[.]”

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Apex as follows:

Section 1. That Chapter 3 of the Town of Apex Code of Ordinances is hereby amended as shown immediately below with deletions being shown by struck-through text and additions shown by underlined text:

Chapter 3 – ~~(RESERVED)~~ NONDISCRIMINATION.

Sec. 3-1. – Purpose.

It is the purpose and intent of the Apex Town Council to protect and safeguard the right and opportunity of all persons in Protected Classes, as defined in this Ordinance, to be free from discrimination. The Apex Town Council’s purpose in enacting this Ordinance is to promote the public health, safety, and welfare of all persons who live, work, visit, and do business in the Town of Apex.

Sec. 3-2. – Policy.

- (a) It is the policy of Apex not to enter into, or maintain a contractual relationship with, any business, entity, or company that discriminates against a Protected Class in employment, subcontracting practices, or the solicitation or hiring of vendors, suppliers, or commercial customers in connection with a Town contract. Nothing in this Ordinance shall limit lawful efforts by a business, entity, or company to remedy the effects of past discrimination. Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any existing federal or state law or either the federal or state constitutions.
- (b) The Town Manager and the Town Attorney are directed to include within the terms of all Town-drafted contracts a nondiscrimination provision which will carry out the purpose of this Section; provided that nothing in this Section shall encroach, or be construed to encroach, upon the powers or immunities of the State of North Carolina or the Federal Government.
- (c) The boards, committees, and commissions of the Town are directed to discourage and seek to eliminate discrimination against Protected Classes to the maximum extent allowed by their respective power, authority, and resources.
- (d) The Town Manager is authorized to establish town policies and procedures to ensure that the functions and actions of the Town of Apex government meet the purpose and intent of this Chapter.

Sec. 3-3. – Definitions.

- (a) Age means an individual’s status as having obtained forty or more years of age.
- (b) Business means any individual, business, or company providing for profit goods, services, facilities, accommodations, transportation, or access to the general public.
- (c) Discriminate, Discrimination, or Discriminatory means any act, policy, or practice that subjects any person to differential treatment based on that person’s inclusion in a Protected Class.
- (d) Employee means an individual employed by, or seeking employment from, an employer in the Town of Apex.
- (e) Employer means a person or entity that employs one or more employees, excluding parents, spouses, or children, in the Town of Apex.
- (f) Familial Status means an individual’s past, current, or prospective status as a parent, adoptive parent, or legal guardian to a child or children below the age of eighteen.

- (g) Gender Identity means the actual or perceived gender-related identity, expression, appearance, mannerisms, or other gender-related characteristics of an individual, independent of the individual's designated sex at birth.
- (h) Marital Status means an individual's past, current, or prospective status as single, married, domestically partnered, in a civil union, divorced, or widowed.
- (i) Natural Hair Style means any hair texture, color, type, or style of wear historically associated with race.
- (j) Place of Public Accommodation means any establishment within the Town of Apex that is open to the public and offers any product, service, or facility, or solicits the patronage or trade of the general public. The term "place of public accommodation" shall include, but not necessarily be limited to, stores, taverns, hotels, motels, restaurants, or any place where food or beverages are sold, retail and wholesale establishments, hospitals, theaters, public entertainment venues and all public conveyances, including the stations or terminals thereof. The term "place of public accommodation" shall not include: a religious organization; any hotel, motel, restaurant, or theater operated by a nonprofit fraternal or social association that restricts its facilities and services to the members of such association/corporation and their guests; or any nonprofit fraternal or social association, or civic, political, or religious organization, when the profits of such association or organization, above reasonable and necessary expenses, are solely for its benefit or mission.
- (k) Protected Class means an individual's age, race, religion, religious belief or non-belief, ethnicity, color, national origin, creed, sex, sexual orientation, gender identity, marital status, natural hair style, genetic information, pregnancy, familial status, disability, veteran or military status, or disabled veteran status.
- (l) Religious Organization means a church, mosque, synagogue, temple, nondenominational ministry, interdenominational and ecumenical organization, mission organization, faith-based social agency, or other entity principally devoted to the study, practice, or advancement of religion.
- (m) Sexual Orientation means actual or perceived heterosexuality, homosexuality, bisexuality, or asexuality.

Sec. 3-4. Prohibited Acts.

- (a) It shall be a violation of this Chapter for any business to deny, directly or indirectly, any person the full and equal enjoyment, use, or privileges of the

goods, services, facilities, and accommodations of a place of public accommodation on the basis of Protected Class status.

- (b) It shall be a violation of this Chapter for an employer to deny any person the right to obtain and hold employment and the benefits associated therewith based on Protected Class status. It shall be unlawful to discriminate against any employee in the employee's compensation, or in the terms, conditions, or privileges of employment, or otherwise make distinctions in regards to employees based on Protected Class status.

Sec. 3-5. Exceptions.

- (a) No employer is prohibited from requiring an employee, during the employee's work hours, to adhere to reasonable dress or grooming standards not otherwise prohibited by federal, state, or local law.
- (b) Nothing in this Chapter shall be construed to prohibit an employer from requiring all of its employees to utilize the employer's applicable internal human resource procedures to address any allegation of discrimination in the workplace. Requiring the following of such procedure shall not be deemed a violation of this Chapter.
- (c) Nothing in this Chapter shall be construed to require any business to make changes requiring a building permit to any existing facility, except as otherwise required by law. Nothing in this Chapter shall be construed to regulate or impose requirements regarding the use of restroom facilities in businesses.
- (d) Use of constitutionally or otherwise legally protected speech shall not be a violation of this Chapter.
- (e) A religious organization, association, or society that employs an individual of a particular religion to perform work associated with the organization that insists employees adhere to the tenets of the religious organization as a condition of employment is not in violation of this Chapter.
- (f) A business that observes the conditions of bona fide affirmative action plan or seniority system is not in violation of this Chapter.
- (g) No business is required to hire or retain unqualified or incompetent personnel.

Sec. 3-6. – Enforcement.

- (a) Any person who believes they have been aggrieved by a breach or violation of Sec. 3-4 of this Chapter may file a written complaint with the Town Manager's office that the person has been or is being, subjected to alleged discrimination as defined in this Chapter, by completing and signing the form

provided by the Town. The complaint form shall include the names and contact information for the aggrieved individual, the business or individuals alleged to have committed the discrimination, a description of the discriminatory conduct, and any other information provided for in the Town's form. There shall be no fee or charge for submitting the form.

- (b) A complete complaint form must be filed within sixty (60) days of the alleged discriminatory act. If the act constitutes a continuing pattern of discrimination the complaint form must be filed within sixty (60) days of the last discriminatory act.
- (c) Upon receipt of the complaint form, the Town Manager will conduct an initial inquiry into the allegations in the complaint, with assistance from the Town Attorney's office as needed. If a complaint is factually validated then the Town will engage in efforts to negotiate a conciliatory resolution to the complaint.
- (d) Filing a complaint pursuant to this Section shall in no way preclude any person from seeking other relief under state or federal law.

Sec. 3-7. – Penalty.

- (a) If a complaint is factually validated and conciliation fails, then, in addition to, or in lieu of other remedies provided by law, any business, person, or corporation violating any provisions of this Chapter may be subject to an enforcement action brought by the Town pursuant to N.C.G.S. 160A-175(d) and (e) for an appropriate equitable remedy, including but not limited to a mandatory or prohibitory injunction commanding the defendant to correct the discriminatory acts prohibited by the Chapter.
- (b) Violation of this Chapter shall not be a crime under N.C.G.S. 14-4 or other law.

Section 2. The Town Clerk and/or Town Manager are hereby authorized to renumber, revise formatting, correct typographic errors, to verify and correct cross references, indexes and diagrams as necessary to codify, publish, and/or accomplish the provisions of this Ordinance or future amendments as long as doing so does not alter the terms of this Ordinance.

Section 3. **Severability, Conflict of Laws.** If this Ordinance or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given separate effect and to the end the provisions of this ordinance are declared to be severable. All

ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

Section 4. Effective Date. This Ordinance shall be effective January 1, 2022.

Introduced by Council Member _____

Seconded by Council Member _____

Attest:

TOWN OF APEX, NORTH CAROLINA

Donna B. Hosch, MMC, NCCMC
Town Clerk

Jacques K. Gilbert
Mayor

Approved As To Form:

Laurie L. Hohe
Town Attorney