

**WEST VINCENT TOWNSHIP
CHESTER COUNTY, PENNSYLVANIA**

ORDINANCE NO. 191-2020

**AN ORDINANCE AMENDING THE WEST VINCENT TOWNSHIP CODE TO
CREATE A NEW CHAPTER ENTITLED "ANTIDISCRIMINATION" THAT
ESTABLISHES THE WEST VINCENT TOWNSHIP HUMAN RELATIONS
COMMISSION; PROVIDES FOR THE MEMBERSHIP AND TERM
REQUIREMENTS, RESPONSIBILITIES, POWERS, AND DUTIES OF THE
COMMISSION; PROHIBITS DISCRIMINATION IN HOUSING, COMMERCIAL
PROPERTY, EMPLOYMENT AND PUBLIC ACCOMODATIONS BASED UPON
ACTUAL OR PERCEIVED SEXUAL ORIENTATION, GENDER IDENTITY OR
EXPRESSION; AND PROVIDES FOR EXCEPTIONS, DEFINITIONS, PROCEDURES,
AND PENALTIES THERETO**

WHEREAS, the Second Class Township Code authorizes the Board of Supervisors to make, amend, and adopt Ordinances that are consistent with the Constitution and the laws of the Commonwealth that it deems necessary for the proper management and control of the Township and the health, safety, and welfare of its citizens;

WHEREAS, the public policy of the United States of America, and the Commonwealth of Pennsylvania, is grounded in the concept that all individuals are entitled to equality and equal protection under law;

WHEREAS, the Board of Supervisors finds that the population of the Township consists of a diverse array of persons representing different characteristic based upon actual or perceived race, color, sex, religion, ancestry, genetic information, national origin, sexual orientation, gender identity or expression, familial status, marital status, age, mental or physical disability, veteran status, or the use of guide or support animals and/or mechanical aids;

WHEREAS, the Township prides itself on the diversity of its citizens and residents, and the harmonious relations which have been fostered in the Township by a widely practiced and recognized attitude of respect among all citizens of the Township;

WHEREAS, the practice or policy of engaging in discrimination or discriminatory practices against any such diversity constitutes a paramount threat to the rights, privileges, peace and good order of the citizens and visitors of the Township, undermines the basic tenets of our freedom as citizens of the United States, and is utterly without place in this Township, which has a celebrated tradition of fiercely defending the individual rights of its citizens; and

WHEREAS, the Board of Supervisors, after due consideration of the proposed ordinance at a duly advertised public hearing, has determined that the health, safety, and general welfare of the residents of the Township will be served by establishing and adopting an official policy of antidiscrimination in the Township, and by establishing a Human Relations

Commission to address matters of alleged discrimination within the Township, as set forth herein;

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Board of Supervisors for West Vincent Township, and it is hereby ordained and enacted, by the authority of the same, to wit:

SECTION 1. CODE AMENDMENT. Part 1, Administrative Legislation, of the West Vincent Township Code is hereby amended to create a new Chapter entitled, "Antidiscrimination", to include the following provisions and powers:

§1. Purpose and declaration of policy.

- A. In order to ensure that all persons, regardless of actual or perceived sexual orientation, gender identity or expression (hereinafter collectively, "Characteristics") enjoy the full benefits of citizenship and are afforded equal opportunities for employment, housing, and the use of public accommodations, it is necessary that appropriate legislation be enacted.
- B. It is hereby declared to be the public policy of the Township to foster the employment of all individuals in accordance with their fullest capacities regardless of such actual or perceived Characteristics, and to safeguard their right to obtain and hold employment without such discrimination, to assure equal opportunities to all individuals and to safeguard their rights to public accommodation and to secure housing accommodation and commercial property regardless of such actual or perceived Characteristics.
- C. Nothing in this chapter shall be construed as supporting or advocating any particular doctrine, position, point of view, or religious view. To the contrary, it is the intention of this chapter that all persons be treated fairly and equally, and it is the express intent of this chapter to guarantee fair and equal treatment under the law to all people of the Township.
- D. This chapter shall be deemed an exercise of the police power of the Township for the protection of the public welfare, prosperity, health and peace of the West Vincent community.

§2. Definitions.

- A. To the extent words and phrases appearing in this Chapter are not expressly defined herein, the meaning of the words and phrases in this Chapter shall be construed consistently with the Pennsylvania Human Relations Act. The following words and phrases when used in this Chapter shall have the following meanings:

TOWNSHIP

The Township of West Vincent, County of Chester, Commonwealth of Pennsylvania.

BOARD OF SUPERVISORS

The Board of Supervisors of West Vincent Township.

CHAPTER

This chapter which shall also be known as the "Antidiscrimination Ordinance."

DISCRIMINATION

Any discriminatory act(s) taken by any person, employer, employment agency, labor organization or public accommodation on the basis of actual or perceived sexual orientation, gender identity or expression.

DISCRIMINATORY ACTS

All acts defined in the Pennsylvania Human Relations Act, Title VII of the Civil Rights Act of 1991, the Age Discrimination in Employment Act and/or any other federal law addressing discrimination based on any protected characteristic protected by this Ordinance, or any acts of Discrimination regardless of whether such actions would otherwise be lawful under state or federal law. The fact that the Pennsylvania Human Relations Act would not define a practice as unlawful when that practice is taken on the basis of actual or perceived sexual orientation, gender identity or expression, genetic information, veteran status, or marital status shall not exempt such practice from being considered a discriminatory act under this chapter.

GENDER IDENTITY OR EXPRESSION

Self-perception, or perception by others, as male or female, and shall include an individual's appearance, behavior, or physical characteristics, that may be in accord with, or opposed to, one's physical anatomy, chromosomal sex, or sex assigned at birth, and shall include, but is not limited to, persons who are undergoing or have completed sex reassignment.

EMPLOYEE

A person who is hired for a wage, salary, fee, or payment to perform work for an employer on a regular basis. A person will be deemed to be an employee if such person regularly performs services for the employer for compensation and the employer controls what work will be done by the person and how it will be done. An employee does not include any individuals who, as a part of their employment, reside in the personal residence of the employer.

EMPLOYER

Any person who employs one or more employees, including the Township, its departments, boards and commissions, and any other government agency within its jurisdiction.

GENETIC INFORMATION

That information which is defined as genetic information in the Genetic Information Nondiscrimination Act of 2008, 42 U.S.C.A. § 2000ff.

HOUSING ACCOMMODATION

A. The term includes:

- i. Any building, structure, mobile home site or facility, or portion thereof, which is used or occupied, or is designed to be used or occupied, as one or more residential units; and
- ii. Any vacant land publicly offered for sale or lease for the purpose of constructing or locating thereon any residential building, structure, mobile home site, or facility.

B. The term "housing accommodation" shall not include any personal residence offered for rent by the owner or lessee thereof, or by the owner or lessee's broker, salesperson, agent, or employee.

PERSON

Any natural person, fraternal, civic or other membership organization, corporation, general or limited partnership, proprietorship, limited liability company, or similar business organization, including the Township, its departments, boards and commissions, and other for profit and nonprofit organizations.

PERSONAL RESIDENCE

A residential building containing no more than two separate residential living units, with one such unit serving as the bona fide residence of the building's owner or lessee.

PUBLIC ACCOMMODATION

Any accommodation, resort or amusement which is open to, accepts or solicits the patronage of the general public or offers goods or services, including loans, to the general public or is listed in Section 4(I) of the Pennsylvania Human Relations Act, 43.P.S. § 954(I), but shall not include any accommodations which are in their nature distinctly private.

SEXUAL ORIENTATION

Actual or perceived homosexuality, heterosexuality, and/or bisexuality.

§3. Unlawful Practices.

The following is prohibited under this chapter:

- A. Discrimination in housing, employment, commercial property, or public accommodations, excluding exceptions made under federal law, Pennsylvania law, or under this chapter.
- B. Retaliation against any individual because such individual has opposed any practice forbidden by this chapter, or because such individual has made a charge, testified or assisted in any manner in any investigation, proceeding or hearing under this chapter.
- C. Aiding, abetting, inciting, compelling, or coercing the doing of any act declared by this chapter to be an unlawful practice, or obstructing or preventing any person from complying with the provisions of this chapter.

§4. Exceptions.

Notwithstanding any other provision of this chapter, the following shall not be considered unlawful under this chapter, or shall otherwise not apply:

- A. Employment practices for a religious corporation, organization, or association, not supported in whole or in part by governmental appropriations, in refusing to hire, house, employ, or otherwise accommodate an individual on the basis of such religious organization's established and demonstrated religious principles or beliefs.
- B. Selections or preferences by a religious institution, denomination or organization, or any charitable or educational organization which is operated or controlled by a religious organization, given to a member of that same religious organization when determined by such organization to promote the established and demonstrated religious principles or beliefs of the organization.
- C. Selections or preferences by any bona fide private or fraternal organization given to a member of that same private or fraternal organization when determined by such organization to promote the aims, purposes, or fraternal principles for which the organization is established or maintained.
- D. Enforcement of a dress code or grooming which is reasonably related to the business or profession being conducted, provided that: (1) such dress code or grooming is not a subterfuge for discriminatory purposes; (2) the employer reasonably accommodates the bona fide religious practices or disability of an employee; or (3) the enforcement

of a dress code or grooming does not have a disparate impact on employees with the Characteristic protected by this chapter.

§5. Establishment of Human Relations Commission.

- A. Pursuant to § 962.1 of the Pennsylvania Human Relations Act, there is hereby established a Human Relations Commission in and for the Township of West Vincent (hereinafter referred to as the "West Vincent Human Relations Commission" or the "Commission").
- B. The West Vincent Human Relations Commission shall consist of five members, who shall serve overlapping terms of five (5) years each. Members of the Commission shall be appointed by Board of Supervisors, and may be removed at any time, with or without cause, by a majority vote of the Board of Supervisors. Members shall be residents of the Township. No member of the West Vincent Human Relations Commission shall hold any office in any political party. Members of the West Vincent Human Relations Commission shall serve without salary but may be paid expenses incurred in the performance of their duties as approved by the Board of Supervisors. If a vacancy shall occur by reason of the death, disqualification, resignation, or removal of a member, a successor shall be appointed by the Board of Supervisors to fill the remainder of the unexpired term.
- C. One of the Commission's members shall be appointed as the Chairperson of the Commission by the Township Board of Supervisors. The Chairperson will be responsible for setting Commission meetings, coordinating with the Township Manager regarding received complaints and answers, and generally ensuring that the duties of the Commission are fulfilled. The Chairperson may delegate responsibility for Commission duties to specific Commissioners or to paid staff, if applicable.
- D. The Commission shall be empowered to promulgate such additional procedures to those set forth herein as it determines to be necessary or desirable to implement the intent of this chapter, subject to review and approval of the Township Board of Supervisors.
- E. The Commission shall keep a full record of its business and shall no less than annually make a written report of its activities, if any, to the Township Board of Supervisors. Interim reports may be made as often as may be necessary or as requested by the Board of Supervisors. In addition to written reports, and upon request of the Board of Supervisors, the Commission shall send a representative to attend a Board of Supervisors meeting in order to present on any matters so requested.
- F. The Township Board of Supervisors hereby grants to the Township Human Relations Commission all of the powers necessary to execute its duties (as set forth below), provided that those powers shall not exceed those exercised by the Pennsylvania Human Relations Commission under the Pennsylvania Human Relations Act.

- G. The Board of Supervisors shall appoint up to two (2) alternate members to the Commission who may be called by the Commission Chairperson to assist with complaint procedures, including, but not limited to, mediation, investigation, and/or public hearings for such complaints, during the actual or anticipated absence, disqualification, or conflict of a Commission member. Alternate members shall possess the qualifications required for Commission membership. The term of office for an alternate member shall be five years. Any Commission alternate shall continue to serve on the Commission in all proceedings involving the matter for which the alternate was initially called until such time as the Commission has made a final determination of the matter. When so called by the Commission Chairperson, an alternate member shall be entitled to participate in all proceedings and discussions of the Commission to the same and full extent as provided by law for the Commission members, including specifically the right to cast a vote as a voting member during any proceedings.

§6. Procedures.

A. Filing a complaint.

- (1) Any person(s) who claims he/she or it has been aggrieved by an unlawful practice prohibited in § 3 of this chapter (the "complainant[s]") may make, sign and file a verified complaint alleging violations of this chapter, which shall include the following information:
 - (a) The name, address, and contact information of the aggrieved person(s);
 - (b) The name, address, and known contact information of the person(s) alleged to have committed the prohibited practice;
 - (c) A concise statement of the facts, including pertinent dates, locations, and persons involved in or witness to the alleged discriminatory practice;
 - (d) If applicable, the address and a description of the public accommodation, dwelling, commercial property, or housing accommodation which is involved; and
 - (e) Such other information as may be required by the Township.
- (2) Complaints may be filed in person at the Township Manager's office, or by mailing such complaints to the Township Office to the Township Manager's attention. All complaints must be received by the Township Office within 180 days of the alleged act of discrimination to be considered timely.
- (3) The Township Manager shall convey all original complaints received by the Township Office to the Chairperson of the Human Relations Commission within

10 days of the office's receipt of the complaint. The Township Manager shall return to the submitter any complaint deemed incomplete or not in technical compliance with this section, along with an explanation for the rejection.

- (4) The Township Office may promulgate forms for use by persons wishing to file a complaint. However, complaints which are prepared without the use of an approved form shall be deemed acceptable under this chapter so long as the requirements of this section can be clearly determined from the document submitted.

B. Notification and answer.

- (1) Within 30 days of its receipt of a complaint, the Human Relations Commission shall send a copy of the complaint to the person(s) charged with a discriminatory practice (the "respondent(s)") and send a notice to the complainant, informing them that their complaint has been received. If the complaint alleges discrimination on a basis proscribed under federal or Pennsylvania law, the notice sent to the person(s) aggrieved shall also inform them of their right to file with the Pennsylvania Human Relations Commission and/or with the federal Equal Employment Opportunity Commission.
- (2) The respondent(s) shall file a written verified answer to the complaint within 30 days of their receipt of the complaint. An answer to a complaint shall be filed in the same manner as an original complaint. The Township Manager's shall convey the answer received by the Township Office to the Chairperson of the Human Relations Commission within 10 days of the office's receipt of the answer. The Commission shall promptly send a copy of the answer to the complainant.

C. Mediation.

- (1) Mediation Conference. If an answer to the complaint has been received, or ten (10) days following the deadline to answer the complaint if no answer was received, the Commission shall invite the parties to voluntarily participate in a mediation conference concerning the dispute. The parties shall respond to the invitation to participate in a mediation conference within fifteen (15) days of being invited to participate.
- (2) Conference Procedures. If mediation is elected by the parties, the parties may jointly select a mediator, in which case they shall be jointly responsible for all financial costs and expenses associated with mediation and may allocate the costs of mediation as they agree. If the parties do not jointly select a mediator, or agree to allocation of costs pursuant to approved procedures of the Commission, the Chairperson of the Commission shall select a mediator, who may be either a member of the Commission or a volunteer from the community. The parties shall meet with mediator at a location mutually agreeable to the parties within thirty

(30) days of the agreement to participate in the mediation, unless otherwise extended by the Chairperson of the Commission. Mediation proceedings shall otherwise be confidential. Neither the results thereof nor any record made in connection therewith shall be made public unless agreed to in writing by both parties to the dispute.

- (3) Conciliation. The mediator shall notify the Commission of whether the mediation conference resulted in a resolution of the complaint within ten (10) days from the date of such resolution or, alternatively, ten (10) days from the date that the mediator determines that mediation will not be possible. In the event the complaint is resolved through the mediation, the Commission shall notify the parties that the complaint has been dismissed.

- D. Dismissal of the complaint. Provided the Commission has not elected under Subsection E of this section to use expanded procedures, the Commission shall, following the mediation, promptly notify the parties that they have dismissed the complaint. If the complaint was not resolved through mediation, this notice shall also state that the complainant may pursue any available remedy under law or equity, including, but not limited to, pursuing the matter in court or pursuing any available claims under the Pennsylvania Human Relations Commission and/or the federal Equal Employment Opportunity Commission. Failure of the complainant to respond to the Commission's inquiries in a timely manner, attend a scheduled mediation conference, or otherwise participate or cooperate with any of the Commission's proceedings or investigation shall result in a dismissal of the complaint, with notice being provided to both parties by the Commission of such dismissal and the reasons therefor.
- E. Option of the Commission to elect for expanded procedures. Subject to the approval of Board of Supervisors, and provided funding is available to implement such procedures, the Commission shall have the authority to elect to adopt expanded procedures, as set forth below. The Commission may obtain funding for expanded procedures from any available source, including federal or state government entities, private foundations, and other funding sources. A majority of Commission members must vote in favor of adopting expanded procedures in order for such procedures to be adopted. In the event that such procedures are adopted, they must, while in effect, be applied to all complaints that are not resolved through mediation. If the Commission has adopted expanded procedures it may also by majority vote, and in its sole discretion, eliminate such procedures. Upon a majority of Commission members voting in favor of adopting expanded procedures, it shall be solely within the discretion of the Township Board of Supervisors to decide whether to adopt or eliminate expanded procedures, and no person shall have the right to make any claim, bring any action, or otherwise contest the Commission and/or Township decision to adopt, decline to adopt, or eliminate expanded procedures.

- F. Expanded procedures: dismissal or non-dismissal of the complaint. If mediation was successful in resolving the complaint, the Commission shall follow the procedures set forth in Subsection D of this section for dismissing the complaint. If mediation was not successful in resolving the complaint, the Commission shall not dismiss the complaint, but shall instead undertake the procedures set out in Subsections G through I of this section.
- G. Expanded procedures: investigation. The Commission shall, in a timely fashion, investigate the allegations of discrimination set forth in the complaint. The Commission may, in the conduct of such investigation, issue subpoenas to any person charged with an unlawful practice to furnish information, records or other documents, as necessary to assist in its investigation.
- H. Expanded procedures: finding of no cause. If it shall be determined after the Commission's investigation that there is no basis for the allegations of the complaint, the Commission shall cause to be issued and served upon the parties written notice of such determination. This notice shall inform the complainant that the complainant may proceed to pursue any available remedy under law or equity, including, but not limited to, pursuing the matter in court or pursuing any available claims under the Pennsylvania Human Relations Commission and/or the federal Equal Employment Opportunity Commission.
- I. Expanded procedures: conciliation. If the Commission, after investigation, determines that probable cause exists for the allegations of the complaint, the Commission shall immediately endeavor to eliminate the unlawful practice complained of by persuasion, conference, and conciliation.
- J. Expanded procedures: public hearing.
- (1) If the Commission, in its discretion, finds it is not possible to eliminate the unlawful practices by persuasion, the Commission shall cause to be issued and served a written notice, together with a copy of the complaint, which informs the respondent that they must answer the charges of such complaint at a hearing before the Commission at a time and place to be specified in such notice.
 - (2) The Commission may designate one or more of its members to preside at such a hearing, or it may at its election conduct such hearing *en banc*. Any Commission member who acted as a mediator, investigator or conciliator shall not participate in such public hearing except as a witness to present the results of the investigation.
 - (3) At the public hearing, the case in support of or against the complaint shall be presented to the Commission by the respective parties or their attorneys. The complainant must appear at the hearing to provide testimony, otherwise the

complaint shall be dismissed. The Commission shall be represented by the Township Solicitor. A court reporter shall make a formal record of the proceedings. If the respondent does not appear at the hearing, the complainant shall still present testimony to substantiate the complaint. Both the complainant and the respondent may introduce the testimony of additional witnesses and may submit other relevant evidence. The Commission and the parties shall not be bound by the strict rules of evidence at the hearing, but irrelevant or unduly repetitious evidence may be excluded by the Commission in its discretion.

- K. Expanded procedures: finding of discrimination. If upon consideration of all of the evidence at the hearing, the Commission finds by a preponderance of the evidence that a respondent has engaged in or is engaging in any unlawful discriminatory act as defined in this chapter, the Commission shall state its findings of fact, and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful discriminatory practice and to take such additional action as the Commission deems appropriate. The Commission shall have the authority to order any remedies available to the Pennsylvania Human Relations Commission under the Pennsylvania Human Relations Act.
- L. Expanded procedures: finding of no discrimination. If, upon consideration of all of the evidence, the Commission finds by a preponderance of the evidence that a respondent has not engaged in any unlawful discriminatory act as defined in this chapter, the Commission shall state its findings of fact, and shall issue and cause to be served on the parties an order dismissing the complaint as to such respondent. The Commission shall also provide a notice to the complainant that the complainant may proceed to pursue any available remedy under law or equity, including, but not limited to, pursuing the matter in court or pursuing any available claims under the Pennsylvania Human Relations Commission and/or the federal Equal Employment Opportunity Commission. Furthermore, if, upon all the evidence at the hearing, the Commission finds that a respondent has not engaged in or is not engaging in any unlawful practice, and also finds that the complaint was brought by the complainant in bad faith, or the complainant fails to appear at the public hearing without a reasonable excuse, the Commission may award attorneys' fees and costs to the prevailing respondent, and shall order the complainant to pay for the Township's attorneys' fees and public hearing costs.
- M. Expanded procedures: Appeal. Any order of the Commission may be appealed to the Court of Common Pleas of Chester County within 60 days of its date as provided by law. The Township shall retain the right to intervene in any appeal.
- N. Expanded Procedures: Enforcement. When the Commission has heard and decided any complaint brought before it, enforcement of its order shall be initiated by the filing of a petition in court, together with a transcript of the record of the hearing before the

Commission, and issuance and service of a copy of said petition as in proceedings in equity.

§7. Private right of action and non-limitation of remedies.

- A. Any person(s) aggrieved by a violation of this chapter shall have a right of action in the Chester Court of Common Pleas or any other court of competent jurisdiction, and may recover for each violation the following remedies:
 - (1) Back pay, front pay and other actual damages;
 - (2) Emotional distress damages;
 - (3) Exemplary damages;
 - (4) Reasonable attorney's fees and court costs; and
 - (5) Such other relief, including injunctive relief, as the court may deem appropriate.
- B. The right of action created by this chapter may be brought upon receipt by the aggrieved person(s) of notice that the Commission has dismissed the complaint or if no such notice is received, after one year from the date of the filing of the complaint. If the person aggrieved has received notice that the Commission has dismissed the complaint, an action under this chapter must be brought by the aggrieved person within one year from the date of receipt of said notice or it will be barred. Equitable principles such as waiver, estoppel and equitable tolling shall apply to the time limitations for the filing of any complaint or other pleading under this chapter.
- C. Nothing in this chapter limits the right of an aggrieved person to recover under any other applicable law or legal theory.

SECTION 2. AUTHORIZATION. The appropriate officers of the Township are authorized to take whatever actions are necessary and appropriate to carry out the purpose and intent of this Ordinance.

SECTION 3. REPEALER. All Ordinances or parts of Ordinances inconsistent herewith or in conflict with any of the specific terms enacted hereby, to the extent of said inconsistencies or conflicts, are hereby specifically repealed.

SECTION 4. REVISIONS. The West Vincent Township Board of Supervisors does hereby reserve the right, from time to time, to adopt modifications of, supplements to, or amendments of its Ordinance, including this provision.

SECTION 5. SEVERABILITY. In the event that any section, sentence, clause, phrase or word of this Ordinance shall be declared illegal, invalid or unconstitutional by any Court of


competent jurisdiction, such declaration shall not prevent, preclude or otherwise foreclose enforcement of any of the remaining portions of this Ordinance.

SECTION 6. EFFECTIVE DATE. This amendment shall become effective five (5) days after date of adoption.


SECTION 7. FAILURE TO ENFORCE NOT A WAIVER. The failure of West Vincent Township to enforce any provision of this Ordinance shall not constitute a waiver by the Township of its rights of future enforcement hereunder.

ENACTED AND ORDAINED this 17th day of August, 2020 by the Board of Supervisors of West Vincent Township.


ATTEST:


Kathryn Shillenn, Township Secretary

**WEST VINCENT TOWNSHIP
BOARD OF SUPERVISORS**


Michael Schneider, Chairman


Bernie Couris, Vice-Chairperson


Sara Shick, Member