ORDINANCE NO. 2017-06

AN ORDINANCE OF THE BOROUGH OF CAMP HILL, CUMBERLAND COUNTY, PENNSYLVANIA, ADOPTING A NEW CHAPTER 24 TO THE CAMP HILL BOROUGH CODE TITLED "ANTI-DISCRIMINATION" WHICH PROHIBITS CERTAIN DISCRIMINATORY PRACTICES IN EMPLOYMENT, HOUSING AND PUBLIC ACCOMMODATION; ESTABLISHES A HUMAN RELATIONS COMMISSION FOR THE BOROUGH OF CAMP HILL; ESTABLISHES PROCEDURES FOR FILING A COMPLAINT WITH THE HUMAN RELATIONS COMMISSION FOR AN ALLEGED UNLAWFUL DISCRIMINATORY ACT AND PROVIDES REMEDIES FOR VIOLATION OF THE ORDINANCE.

WHEREAS, the population of the Borough of Camp Hill (the "Borough") consists of people possessing a number of different personal characteristics regarding their actual or perceived race, color, sex, religion, ancestry, genetic information, national origin, sexual orientation, gender identity or expression, familial status, marital status, age, veteran status, mental or physical disability, use of guide or support animals and/or mechanical aids; and

WHEREAS, the direct negative and secondary effects of discriminatory practices involving the personal characteristics described above in matters of employment, housing, and public accommodation in this country are well known and have been extensively studied and demonstrated; and

WHEREAS, the practice or policy of discrimination against such individuals or groups is a matter of public concern that threatens the rights and privileges of the inhabitants, guests and visitors of the Borough; and

WHEREAS, the Borough Council of the Borough of Camp Hill (the "Council") desires to establish and adopt an official policy of non-discrimination in the Borough in all matters involving employment, housing and use of public accommodations; and

WHEREAS, the Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744, as amended, 43 P.S. §951-963 (the "Act"), does not preclude the Borough from enacting and enforcing its own Anti-Discrimination Ordinance which prohibits additional categories of discrimination; and

WHEREAS, the Act specifically authorizes political subdivisions to establish a local Human Relations Commission which shall have the powers and duties similar to those executed by the Pennsylvania Human Relations Commission under the Act;

NOW, THEREFORE, BE IT ENACTED AND ORDAINED, that the Code of the Borough of Camp Hill shall be amended by adding a new Chapter 24, titled "Anti-Discrimination," which shall provide as follows:

Section 1. Purpose and Declaration of Policy.

A. In order to ensure that all persons, regardless of actual or perceived race, color, sex, religion, ancestry, genetic information, national origin, sexual orientation, gender identity or expression, familial status, marital status, age, veteran status, mental or physical disability, use of guide or support animals and/or mechanical aids enjoy the full benefits of citizenship and are afforded equal opportunities for employment, housing, and use of public accommodations, it is necessary that appropriate legislation be enacted.

B. It is hereby declared to be the public policy of the Borough of Camp Hill ("Borough") to foster the employment of all individuals in accordance with their fullest capacities regardless of actual or perceived race, color, sex, religion, ancestry, genetic information, national origin, sexual orientation, gender identity or expression, familial status, marital status, age, veteran status, mental or physical disability, use of guide or support animals and/or mechanical aids, 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 without regard to actual or perceived race, color, sex, religion, ancestry, genetic information, national origin, sexual orientation, gender identity or expression, familial status, marital status, age, veteran status, mental or physical disability, use of guide or support animals and/or mechanical aids.

C. Nothing in this Chapter shall be construed as supporting or advocating any particular doctrine, position, point of view, lifestyle 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 Borough.

D. This Chapter shall be deemed an exercise of the police power of the Borough for the protection of the public welfare, prosperity, health and peace of the Camp Hill community.

Section 2. Definitions.

The following words and phrases when used in this Chapter shall have the meanings given to them in this Section.

BOROUGH: The Borough of Camp Hill, County of Cumberland, Commonwealth of Pennsylvania.

BOROUGH COUNCIL: The Borough Council of Camp Hill Borough.

DISCRIMINATION: Any discriminatory act(s) taken by any person, employer, employment agency, labor organization or public accommodation on the basis of actual or perceived race, color, sex, religion, ancestry, genetic information, national origin, sexual orientation, gender identity or expression, familial status, marital status, age, veteran status, mental or physical disability, use of guide or support animal and/or mechanical aids.

DISCRIMINATORY ACTS: All acts defined in Section 5 of the Pennsylvania Human Relations Act, 43 P.S. §955, as unlawful discriminatory practices. 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 or marital status shall not exempt such practice from being considered a discriminatory act under this chapter.

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 Borough, its departments, boards and commissions, and any other government agency within its jurisdiction.

FRIVOLOUS CLAIM: A complaint where the complainant lacks any factual or legal basis for the alleged conduct in violation of this Ordinance and clearly lacks any probability of success on the merits.

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, are transgendered or gender variant.

GENDER VARIANT: A person whose gender identity or gender expression does not conform to socially defined male or female gender expectations.

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

ORDINANCE: This chapter, which shall also be known as the "Anti-Discrimination Ordinance."

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 Borough, its departments, boards and commissions, and other for-profit and nonprofit organizations.

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(l) of the Pennsylvania Human Relations Act, 43 P.S. §954(l), but shall not include accommodations which are in their nature distinctly private.

SEXUAL ORIENTATION: Actual or perceived homosexuality, heterosexuality and/or bisexuality.

To the extent words and phrases appearing in this Chapter are not expressly defined herein, the meaning of this chapter shall be construed consistently with the Pennsylvania Human Relations Act.

Section 3. Unlawful Practices.

A. Discrimination in housing, employment, and access to public accommodations is prohibited 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 is prohibited 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 is prohibited under this Chapter.

Section 4. Exception.

A. The provisions of this Chapter shall not bar the following from giving preference to persons of the same religion or denomination or to members of the following from making such selection as is calculated by such organization to promote the religious principles or the aims, purposes or fraternal principles for which it is established or maintained:

1) Any religious or denominational institution; or

2) Any charitable or educational organization which is operated, supervised or controlled by or in connection with any religious organization; or

3) Any bona fide private or fraternal organization.

B. The provisions of this Chapter shall not make it an unlawful employment practice for a religious corporation or association, not supported in whole or in part by governmental appropriations, to refuse to hire or employ an individual on the basis of religion or sex where that is a qualification due to the group's beliefs and practices.

Section 5. Establishment of Human Relations Commission.

A. Pursuant to 43 P.S. §962.1 of the Pennsylvania Human Relations Act, there is hereby established a Human Relations Commission in and for Camp Hill Borough (hereinafter referred to as the Camp Hill Human Relations Commission or the "Commission").

B. The Commission shall consist of five members, who shall serve staggered terms of three years each, except that the initial members shall have a term of one year for one member, two years for two members and three years for two members, respectively. At all times there shall be an odd number of members. All members of the Commission shall be appointed by the Borough Council. Members shall be residents of the Borough or individuals who work full time within

the Borough. No voting member of the Commission shall hold any office in any political party. Members of the Commission shall serve without salary but may be paid expenses incurred in the performance of their duties, as approved by the Borough Council.

C. One of the Commission's members shall be appointed as Chairperson of the Commission by Borough Council. The Chairperson will be responsible for setting Commission meetings, coordinating with the Camp Hill Borough Clerk 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. Members of the Commission shall, as soon after their appointment as practical, attend such training and education seminars or sessions as deemed necessary to acquaint themselves with the functioning of the Camp Hill Human Relations Commission under this Chapter, as well as the terms, conditions, and provisions of the Pennsylvania Human Relations Act, and the operation of the Pennsylvania Human Relations Commission. Such training and education shall be as directed by the Chairperson, and shall be performed in conjunction with the state Human Relations Commission.

E. Borough Council hereby grants to the Commission all of the powers necessary to the execution of 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.

Section 6. Procedures; Expanded Procedures.

A. Filing a Complaint.

1) Any person(s) claiming to be aggrieved by an unlawful practice may make, sign and file a verified complaint alleging violations of this Chapter, which shall include the following information:

a. The name and address of the aggrieved person(s);

b. The name and address of the person(s) alleged to have committed the prohibited practice;

c. A concise statement of the facts, including pertinent dates, constituting the alleged discriminatory practice;

d. If applicable, the address and a description of the dwelling unit which is involved; and

e. Such other information as may be required by the Borough.

2) Complaints may be filed in person at the Borough office or by mailing such complaints to the Borough office or to the Chairperson of the Human Relations Commission. All complaints must be received by the Borough office or by the Commission within 180 days of the alleged act(s) of discrimination to be considered timely.

3) The Borough office shall convey the complaint to the Chairperson of the Human Relations Commission within 10 days of receipt of the complaint. A majority vote by the Commission may dismiss any complaint that it deems to be a frivolous complaint.

B. Notification and Answer.

1) Within 30 days of its receipt of a complaint, the Commission shall

a. Send a copy of the complaint to the person(s) charged with a discriminatory practice (the "respondent(s)"); and

b. Send a notice to the person(s) aggrieved, informing them that the complaint has been received. If the complaint alleges discrimination on a basis prescribed under federal or state law, the notice sent to the person(s) aggrieved shall also inform them of the right to file with the state 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 60 days of receipt of the complaint. An answer to a complaint may be filed in the same manner as an original complaint. If the answer is filed with the Borough office, it shall be conveyed by the Borough Manager to the Chairperson of the Commission within 10 days of the Borough office's receipt thereof. The Commission shall promptly send a copy of the answer to the person(s) aggrieved.

C. Fact finding conference.

1) After the answer has been received, the Commission shall, within 60 days, invite the parties to voluntarily participate in a fact finding conference concerning the dispute. The parties shall respond to the invitation to participate in a fact finding conference within 30 days of being invited to participate.

2) If the parties agree to participate in a fact finding conference, the parties shall meet with a Commission member at a location mutually agreeable to the parties within 30 days of the agreement to participate. Each party will be invited at the fact finding conference to present evidence and documents relevant to the complaint. The fact finding conference will not be a public event, and no record of the conference will be created, excepting the findings of fact detailed in subsection (3).

3) The parties shall notify the Commission of whether the fact finding conference resulted in a resolution of the complaint. In the event the complaint is resolved, the Commission shall notify the parties that the complaint has been dismissed. In the event the complaint is not resolved through the fact finding conference, then the Commissioner, within 30 days, shall prepare findings of fact and a conclusion as to whether the Commissioner finds probable cause that an unlawful practice has occurred.

D. Disposition of the Complaint. Provided the Commission has not elected under Subsection E of this section to use expanded procedures, and if the complaint is not resolved through the fact finding conference, the Commission shall, at the second Commission meeting following the fact finding conference, consider the findings prepared by the Commissioner who conducted the fact finding conference. The Commission shall accept or reject the findings by public vote. The Commission shall provide the parties with the findings of fact and conclusion, shall notify the parties of the outcome of the vote, and this notice shall also indicate that the person aggrieved has a right to pursue the matter in court by filing a lawsuit.

E. Option of the Commission to elect for expanded procedures. The Commission shall have the authority to elect to adopt expanded procedures as set forth in subsections (F) through (L) of this Section subject to approval by the Borough Council and appropriation of funding for such procedures. 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 a fact finding conference. If the Commission has adopted expanded procedures, it may also, by majority vote and in its sole discretion, eliminate such procedures.

F. Expanded procedures: Dismissal or non-dismissal of the Complaint. If the fact finding conference was successful in resolving the complaint, the Commission shall follow the procedures set forth in subsection (C)(3) for dismissing the complaint. If the fact finding conference 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 (L) of this Section.

G. Expanded procedures: Investigation. The Commission shall, in a timely fashion, investigate the allegations of discrimination set forth in the complaint.

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 person aggrieved that he/she has the right to pursue the matter in court by filing a lawsuit.

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, conference or conciliation, the Commission shall cause to be issued and served a written notice, together with a copy of the complaint, which informs the respondent that the respondent 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 shall designate three of its members to preside at such a hearing. The Commissioner who prepared and/or presents the findings of fact shall not preside at the hearing.

3) At the public hearing, the case in support of the complaint shall be presented by the Commission by pro bono counsel, by Commission staff, or by the Commissioner who prepared the findings of fact. The case in support of the Complaint may instead be presented by the complainant's attorney, if the complainant is represented. Both the complainant and the respondent may appear at the hearing with or without counsel and provide testimony. In addition, both the complainant and the respondent may introduce the testimony of additional witnesses and may submit documentary evidence. The Commission and the parties shall not be bound by the strict rules of evidence at the hearing.

K. Expanded procedures: Findings. If upon all the evidence at the hearing the Commission shall find that a respondent has engaged in or is engaging in any unlawful discriminatory practice 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 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 all the evidence the Commission shall find that a respondent has not engaged in any unlawful discriminatory practice, 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.

Section 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 Cumberland County 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, as those remedies are defined in the Pennsylvania Human Relations Act and case law interpreting the same;

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 limitation for the filing of any complaint or other pleading under this Chapter.

C. Nothing in this Chapter limits the right of any aggrieved person to recover under any other applicable law or legal theory.

Enacted this 10 day of May, 2017.

ATTEST:

Secretary

President

APPROVED THIS 10 DAY OF May, 2017.

Mayor

Mayor

ATTESTED TO BE A TRUE AND CORRECT COPY OF THE BOROUGH OF CAMP HILL ORDINANCE ADOPTING A NEW CHAPTER 24 TO BOROUGH CODE TITLED "ANTI-DISCRIMINATION"

Borough Solicitor