



# City of Tucker

## MEMO

**To:** Honorable Mayor and City Council Members  
**From:** Councilmember Rece, Councilmember Schroeder, Councilmember Lerner  
**CC:** Tami Hanlin, City Manager  
**Date:** June 12, 2023  
**RE:** Memo for Unlawful Discrimination Ordinance

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### **Description for on Agenda:**

O2023-05-08 Unlawful Discrimination Ordinance

### **Issue:**

Per our charter 3.01 (2), Councilmember Rece, Councilmember Schroeder and Councilmember Lerner respectfully requested to place an item on the agenda on May 8<sup>th</sup> for a first read and June 12<sup>th</sup> for a second read.

### **Recommendation:**

To place the attached proposed ordinance update (article addition) on the June 12th Council Meeting agenda for a second read. Per our charter and from discussion with our City Attorney, it is our understanding it does not require a public hearing. However, we believe one may be included.

### **Background:**

The Ad Hoc Non-Discrimination Working Group Report 9.2022.pdf was provided at the work session meeting on Sept. 26, 2022 agenda Item E.4.

### **Summary:**

The proposed updated ordinance includes edits to address questions and concerns brought forward during the public hearing and from community stakeholders after the first read. These were completed with guidance from our City Attorney.

The following edits, based on questions and concerns brought forward during the May 8 public hearing and comments from community stakeholders after the first read, have been made to proposed Ordinance O2023-05-08, Article VIII “Unlawful Discrimination” in Chapter 30, “Offenses and Miscellaneous Provisions”, in consultation with our city attorney:

## **Part I**

### **Sec. 30-302. - Civil Rights Declared**

- Moved from Sec. 30-303 to Sec. 30-302
- Added
  - (3) The right to be served or receive service at any place of public resort, accommodation, assemblage, or amusement without discrimination.

### **Sec. 30-303. - Definitions**

- Moved from Sec. 30-302 to Sec. 30-303
- Updated definition of Employer
  - (4) EMPLOYER. A person who employs one or more employees in the City of Tucker, or any agent of such person, for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year. For purposes of this article, the term “employer” shall not include any government entity, department, or agency.
- Added text to (12) PLACE OF PUBLIC RESORT, ACCOMMODATION, ASSEMBLAGE, OR AMUSEMENT
  - For the purposes of this Article, the term “place of public resort, accommodation, assemblage, or amusement” shall not include any government entity, department, or agency.

### **Sec. 30-304. - Exceptions**

- Added text to introduction
  - Notwithstanding the foregoing, the following are not discriminatory practices prohibited by this Article:
- Moved religious organization text and other exception text to a new section for exemptions (see below for Sec. 30-305)
- Minor grammatical edits to adjust for introductory language being added
- Added back in exception for
  - Practices of an employer that is observing conditions of a bona-fide seniority system or bona-fide affirmative action plan that is not a pretext to evade the purposes of this Article.
- Removed exception for
  - A place of public accommodation that includes single-sex designated areas within the place of public accommodations, as long as the place of public accommodation does not discriminate on any other basis identified in this article.

### **Section 30-305. – Exemptions**

- Added Exemptions as a new section with introductory language
  - Nothing in this Article shall:
- Added the following exemptions
  - (1) Be construed to apply to a religious organization or school or other educational institution if the institution is in whole or substantial part controlled, managed, owned, operated, or supported by a religious organization; except that this Article shall apply to activities of the organization that generate unrelated business taxable income under Section 511(a) of the Internal Revenue Code of 1986.
  - (2) Require an individual or business, club, institution, membership organization, or religious organization to act in violation of the associational rights granted by the Constitution of the United States and the State of Georgia.
  - (7) Be construed to prevent children’s clubs, institutions or membership organizations from restricting non-commercial accommodations, advantages, facilities, membership and privileges to persons of the same sex, if such sex restriction is fundamental to the nature or purpose of the club, institution, or membership institution.
  - (8) Be construed to prohibit treating disabled persons more favorably than non-disabled persons or to prohibit treating senior citizens more favorably than non-senior citizens.
  - (9) Be construed to prohibit imposing age limits up to the age of 21.
  - (10) Be construed to apply to the owner or lessor of a single-family residential dwelling or lot or an accessory building on such lot where the owner or lessor resides therein or thereon. Nothing in this Article shall be construed to create an exemption from any applicable zoning, land use, or other regulation contained in this Code.
- Added “families” in the below
  - (5) Prevent a place of public accommodation to afford beneficial pricing or policies to senior citizens, veterans, students, families, or individuals with disabilities.

### **Sec. 30-306. - Enforcement**

- Changed from 30-305 to 30-306
- Under (7) added text from Council Member Orlando
  - Complainant, then shall have 15 business days to amend their complaint and resubmit to the hearing officer for reconsideration. A second dismissal shall act

as a final determination on the merits and the complaint may not be resubmitted.

- Under (14) added text to clarify evidence
  - which shall comport with those required in non-jury trials by O.C.G.A. § 24-1-2(b) as now or hereafter interpreted by the courts of this state.

**Sec. 30-308. – No Private Right of Action.** This Article does not create a private right of action.

- The above section was added for clarity

**Sec. 30-309. – Administrative Procedures.** The City Manager and City Attorney are authorized to develop administrative procedures as are necessary to give effect to this ordinance, including but not limited to establishing the appropriate rate of compensation for hearing officers and mediators.

- The above section was moved from a separate Part IV

**Sec. 30-310. Distribution.** The City’s Finance Director will ensure that a copy of this ordinance be distributed to every holder of an Occupational Tax Certificate within the City of Tucker at least once per year.

- The above section was moved from a separate Part V

## **PART II**

- Language remains the same but added text
  - A new Code Section shall be created in Article IV of Chapter 2, “Administration”, which shall read as follows:
  - **Sec. 2-122. – City employment non-discrimination.**

## **PART III**

- Changed from 30 to 45 days