

ORDINANCE _____

AN ORDINANCE OF THE BOROUGH OF STATE COLLEGE, COUNTY OF CENTRE, COMMONWEALTH OF PENNSYLVANIA, ADOPTING A NEW PART I OF CHAPTER V. CONDUCT TO THE CODIFICATION OF ORDINANCES, TITLED, "ANTI-DISCRIMINATION" WHICH PROHIBITS CERTAIN DISCRIMINATORY PRACTICES IN EMPLOYMENT; ESTABLISHES A HUMAN RELATIONS COMMISSION FOR THE BOROUGH OF STATE COLLEGE, ESTABLISHES PROCEDURES FOR FILING A COMPLAINT WITH THE HUMAN RELATIONS COMMISSION FOR AN ALLEGED UNLAWFUL DISCRIMINATORY ACT AND PROVIDES REMEDIES FOR VIOLATIONS OF THE ORDINANCE.

SECTION 1. SHORT TITLE. This Ordinance is known and may be cited as the "Anti-Discrimination Ordinance."

SECTION 2. By authority of the Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744, as amended, 43 P.S. Sections 951-963 (the "Act"), the Borough can enact and enforce its own Anti-Discrimination Ordinance which prohibits additional categories of discrimination; and 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.

SECTION 3. Amend the Codification of Ordinances for the Borough of State College to insert a new Part I in Chapter V, titled, "Anti-Discrimination Ordinance," which shall provide as follows:

Section 901. Preamble. WHEREAS, equality of all individuals is a basic tenet upon which the United States of America was founded; and

WHEREAS, the population of the Borough of State College (the "Borough") is reflective of the general population of the United States of America, and consists of people possessing a number of different personal characteristics regarding their actual or perceived race, color, sex, religion, ancestry, national origin, sexual orientation, gender identity or expression, familial status, marital status, age, mental or physical disability, use of guide or support animals and/or mechanical aids; and

WHEREAS, the Borough prides itself on the diversity of its citizenry, and the harmonious relations which have been fostered in the Borough by a widely practiced and recognized attitude of tolerance among all people regardless of their actual or perceived race, color, sex, religion, ancestry, national origin, sexual orientation, gender identity or expression, familial status, marital status, age, mental or physical disability, use of guide or support animals and/or mechanical aids, source of income; and

WHEREAS, the direct negative and secondary effects of discriminatory practices involving the personal characteristics described above in matters of employment 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 undermines the foundations of a free democratic society; and

WHEREAS, Borough Council for the Borough of State College (the "Council") desires to establish and adopt an official policy of non-discrimination in the Borough in all matters involving employment.

Section 902. Purpose and Declaration of Policy.

A. In order to ensure that all persons, regardless of actual or perceived race, color, sex, religion, ancestry, national origin, sexual orientation, gender identity or expression, familial status, marital status, age, 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, it is necessary that appropriate legislation be enacted.

B. It is hereby declared to be the public policy of the Borough to foster the employment of all persons in accordance with their fullest capacities regardless of actual or perceived race, color, sex, religion, ancestry, national origin, sexual orientation, gender identity or expression, familial status, marital status, age, 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.

C. Nothing in this Ordinance 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 Ordinance that all persons be treated fairly and equally, and it is the express intent of this Ordinance to guarantee fair and equal treatment under the law to all people of the Borough.

D. This Ordinance 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 State College community.

Section 903. Definitions. The following words and phrases appearing with initial capital letters when used in this Ordinance shall have the meanings given to them in this subsection.

"Borough" means the Borough of State College, County of Centre, Commonwealth of Pennsylvania.

"Borough Council" means the Borough Council of the Borough of State College.

"Discrimination" means 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, national origin, sexual orientation, gender identity or expression, familial status, marital status, age, mental or physical disability, use of guide or support animals and/or mechanical aids, and source of income.

"Discriminatory Acts" means all acts defined in the Pennsylvania Human Relations Act 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, or marital status shall not exempt such practice from being considered a "Discriminatory Act" under this Ordinance.

“Employee” does not include any persons who, as a part of their employment, reside in the personal residence of the employer.

"Employer" includes any political subdivision or board, department, commission or school district thereof and any person employing four (4) or more persons within the Borough, but excluding any fraternal, sectarian, charitable or educational group which is operated, supervised or controlled by or in connection with a religious organization or religious group, or religious group or any Person who as part of their employment reside in the home of their employer.

“Familial Status” means the state of being married, single, divorced, separated, widowed, or a parent, a person who is pregnant or in the process of securing legal custody of any Person, of any Person who has not attained the age of 18 years, stepparent, foster parent, or grandparent of a minor child, or the state of being a provider of care to a person or persons in a dependent relationship as defined by state law, whether in the past, present, potentially in the future, or pursuant to employer perception.

“Gender Identity or Expression” means self perception, or perception by others, as male or female, and shall include a person’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.

“Marital Status” mean the state of being married, unmarried, divorced, separated or widowed.

"Ordinance” means this Ordinance which shall also be known as the Anti-Discrimination Ordinance.

“Person” means 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 non-profit organizations.

"Sexual Orientation” means actual or perceived homosexuality, heterosexuality and/or bisexuality.

To the extent words and phrases appearing in this Ordinance that are not expressly defined herein, the words and phrases shall be defined in accordance with the meaning given to such term in the Pennsylvania Human Relations Act or any successor amendments to the Act.

Section 904. Unlawful Practices.

- A. Discrimination in employment is prohibited under this Ordinance.
- B. Retaliation against any person because such person has opposed any practice forbidden by this Ordinance, or because such person has made a charge, testified or assisted in

any manner in any investigation, proceeding or hearing under this Ordinance is prohibited under this Ordinance.

C. Aiding, abetting, inciting, compelling or coercing the doing of any act declared by this Ordinance to be an unlawful practice, or obstructing or preventing any person from complying with the provisions of this Ordinance is prohibited under this Ordinance.

Section 905. Exception. Notwithstanding any other provision of this Ordinance, it shall not be 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 a Person on the basis of religion.

Section 906. 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 Borough of State College (hereinafter referred to as the “Human Relations Commission” or the “Commission”).

B. The Human Relations Commission shall consist of five (5) members, who shall serve overlapping terms of three (3) years each. Members of the Commission shall be appointed by Borough Council. Members shall be residents of the Borough of State College, Patton Township, Ferguson Township, College Township, or Harris Township. No member of the Human Relations Commission shall hold any office in any political party. Members of the Human Relations 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 the Chair of the Commission by the Commission members. The Chair will be responsible for setting Commission meetings, coordinating with the Borough Manager regarding received complaints and answers, and generally ensuring that the duties of the Commission are fulfilled. The Chair may delegate responsibility for Commission duties to specific Commissioners or to paid staff, if applicable.

D. The Borough Council hereby grants to the 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.

Section 907. Procedures.

A. Filing a Complaint. Any Person(s) who claims he/she has been aggrieved by an unlawful practice prohibited in Section 903 of this Ordinance may make, sign and file a verified complaint alleging violations of this Ordinance, which shall include the following information:

The name and address of the aggrieved Person(s); 2) The name and address of the Person(s) alleged to have committed the prohibited practice; 3) A concise statement of the facts, including pertinent dates, constituting the alleged discriminatory practice; and 4) Such other information as may be required by the Borough.

Complaints may be filed in person at the Borough Manager's office, or by mailing such complaints to the Borough Manager's office or to the Chair of the Human Relations Commission. All complaints must be received by the Borough Manager's office or by Human Relations Commission within one hundred and eighty (180) days of the alleged act of discrimination to be considered timely.

The Borough Manager's office shall convey all original complaints received by that Office to the Chair of the Human Relations Commission within ten (10) days of the Office's receipt of such complaints.

B. Notification and Answer. Within thirty (30) days of its receipt of a Complaint, the Human Relations Commission shall: 1) send a copy of the complaint to the Person(s) charged with a discriminatory practice (the "Respondent(s)"); and 2) send a notice to the Person(s) aggrieved, informing them that their complaint has been received. If the complaint alleges discrimination on a basis proscribed under federal or state law, the notice sent to the Person(s) aggrieved shall also inform them of their right to file with the state Human Relations Commission and/or with the federal Equal Employment Opportunity Commission.

The Respondent(s) shall file a written verified answer to the complaint within sixty (60) days of their 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 Manager's office, it shall be conveyed by the Borough Manager to the Chair of the Human Relations Commission within ten (10) days of the Borough Manager's office's receipt thereof. The Commission shall promptly send a copy of the answer to the Person(s) aggrieved.

C. Mediation. After the answer has been received, the Commission shall, within sixty (60) days, invite the parties to voluntarily participate in the mediation of their dispute. The parties shall respond to the invitation to mediate within thirty (30) days of being invited to mediate their dispute.

If mediation is elected by the parties, the parties may jointly select a mediation service, in which case the parties shall be financially responsible for all costs and expenses associated with mediation. If the parties do not jointly select a mediator, the Commission shall select a mediator, a volunteer from the community, or a contracted mediation service. The Commission shall use cost-free volunteer mediators only, unless funds are approved for contracted mediation services by the Borough Council, or are obtained from an outside funding source.

The parties shall notify the Commission of whether the mediation was successful in resolving the complaint. Mediation proceedings shall otherwise be confidential and shall not be made public unless agreed to in writing by both parties to the dispute.

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 indicate that the Person aggrieved has a right to pursue the matter in the Court of Common Pleas of Centre County or such other forum as may be provided by law.

E. Option of the Commission to Elect for Expanded Procedures. Subject to the approval of Borough Council, and provided funding is available to implement such procedures, the Commission shall have the authority to elect to adopt expanded procedures, as set forth in subsections F through L of this Section. 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. Provided funds are available, it shall be solely within the discretion of the Commission and the Borough Council 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 Council's decision to adopt, decline to adopt, or eliminate expanded procedures. This section does not create any private right or entitlement to have expanded procedures implemented, even if funding is available for such 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 Person aggrieved that they have 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: Hearing. 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.

The Commission may designate one or more of its members to serve as hearing officer, or it may at its election conduct such hearing en banc appointing one of its members to preside.

At the hearing, the case in support of the complaint shall be presented to the Commission by the complainant, counsel for the complainant or by Commission staff. 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 consideration of all of the evidence at the hearing, the Commission finds that a respondent has engaged in or is engaging in any unlawful Discriminatory Act as defined in this Ordinance, 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 that a respondent has not engaged in any unlawful Discriminatory Act as defined in this Ordinance, 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 908. Private Right of Action and Non-Limitation of Remedies.

A. Any Person(s) aggrieved by a violation of this Ordinance shall have a right of action in the Centre 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 Ordinance may be brought: 1) upon receipt by the aggrieved Person(s) of notice that the Commission has dismissed the complaint; or 2) if no such notice is received, after one (1) 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 Ordinance must be brought by the aggrieved Person within one (1) 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 Ordinance.

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

Section 909. Multiple Filings. This ordinance shall have no jurisdiction over matters which are the subject of pending or prior filings made by an aggrieved person before any state or federal court or agency of competent jurisdiction. Nothing contained herein shall prohibit any aggrieved person from pursuing any civil, state or federal remedy available following completion of proceedings under this ordinance.

Section 910. Severability. If any clause, sentence, paragraph or part of this Ordinance, or the application thereof to any person or circumstance, shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this Ordinance nor the application of such clause, sentence, paragraph or part to other persons or circumstances but shall be confined in its operation to the clause, sentence, paragraph or part thereof and to the persons or circumstances directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the legislative intent that this Ordinance would have been adopted had such provisions not been included or such persons or circumstances been expressly excluded from their coverage.

Section 911. Penalties. Any person who shall violate any of the provisions of Section 901 through 910 herein or who resist or interfere with any authorized representative of the Municipality in the performance of his duties shall, upon conviction thereof before any District Justice, be sentenced to pay a fine of not less than \$100.00 nor more than \$1,000.00 plus costs, to be paid to the Municipality.

SECTION 5. Effective Date. This Ordinance shall become effective shall be July 1, 2008.

ENACTED AND ORDAINED this 17th day of December, 2007.

ATTEST:

BOROUGH OF STATE COLLEGE

Cynthia S. Hanscom
Assistant Borough Secretary

By: _____
Catherine G. Dauler
President of Council

EXAMINED AND APPROVED as an Ordinance this _____ day of _____,
2007.

Bill Welch
Mayor