

## ORDINANCE NO. 2024-03

### TO AMEND SECTIONS 511.01, 511.05 AND 509.07 OF THE CODIFIED ORDINANCES TO INCLUDE MILITARY STATUS AS A PROTECTED CLASS AND MODIFY CERTAIN PROCEDURAL REQUIREMENTS IN CHAPTER 511

WHEREAS, in November of 2019, the City adopted Chapter 511 “Unlawful Discrimination,” and Chapter 509.07 “Ethnic Intimidation” to prohibit discrimination on the bases of certain protected classes; and

WHEREAS, the City desires to amend Chapters 511 and 509.07 to include “military status” as a protected class and prevent discrimination against current and former uniformed services members; and

WHEREAS, additional procedural modifications to Chapter 511 are necessary to better aid the City and the Commission in reviewing complaints, and to provide clarity to potential complainants when filing complaints.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WESTERVILLE, STATE OF OHIO, THAT:**

**SECTION 1:** That Section 511.01 “Definitions” of the Codified Ordinances be and hereby is amended to read as follows:

#### **“511.01 Definitions.**

As used in this chapter:

- (a) "Age" means at least forty years old, except as otherwise provided in this chapter.
- (b) "Aggrieved individual" means an individual who claims to have been injured by an unlawful discriminatory act or practice described in this chapter.
- (c) "Burial lot" means any lot for the burial of deceased individuals within any public burial ground or cemetery, including, but not limited to, cemeteries owned and operated by companies or associations incorporated for cemetery purposes.
- (d) "Commission" means the Columbus Community Relations Commission and its agents and subcontractors or such comparable agency as Council may approve.
- (e) "Common use areas" means rooms, spaces, or elements inside or outside a building that are made available for the use of residents of the building or their guests, and includes, but is not limited to, hallways, lounges, lobbies, laundry rooms, refuse rooms, mail rooms, recreational areas, and passageways among and between buildings.

(f) "Complainant" means an aggrieved individual who, pursuant to the provisions of this chapter, files with the Clerk of Council a written complaint alleging an unlawful discriminatory act or practice.

(g) "Controlled substance" has the same meaning as in R.C. § 3719.01.

(h) "Covered multifamily dwellings" means buildings consisting of four or more units if such buildings have one or more elevators and ground floor units in other buildings consisting of four or more units.

(i) "Disability" or "disabled" with respect to an individual means a physical or mental impairment that substantially limits one or more major life activities, including the functions of caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working; a record of a physical or mental impairment; or being regarded as having a physical or mental impairment. "Disability" does not include any physiological disorder or condition, mental or psychological disorder, or disease or condition caused by an illegal use of any controlled substance by an employee, applicant, or other individual, if an employer, employment agency, personnel placement service, labor organization, or joint labor-management committee acts on the basis of that illegal use.

(j) "Disabled tenant" means a tenant or prospective tenant who is an individual with a disability.

(k) "Discriminate" means to differentiate and treat differently, including to segregate or separate.

(l) "Discriminatory restrictive covenant" means any specification in a deed, land contract, or lease limiting the transfer, rental, lease, or other use of any housing accommodations because of race, color, religion, sex, national origin, age, familial status, military status, disability, pregnancy, sexual orientation, gender identity, or gender expression, as a condition of affiliation or approval.

(m) "Dwelling unit" means a single unit of residence for a family of one or more individuals.

(n) "Employee" means an individual employed by any employer but does not include any individual employed in the domestic service of any person.

(o) "Employer" includes any person who regularly employs for compensation four or more individuals, excluding the employer's parents, spouse, and children, including any person acting directly or indirectly in the interest of an employer, provided "employer" does not include a public school system, or an agency of government other than the City.

(p) "Employment agency" includes any person regularly undertaking, with or without compensation, to procure opportunities for employment or to procure, recruit, refer, or place employees.

(q) "Familial status" means having either of the following family characteristics, where "family" also includes an individual:

(1) One or more individuals who are under eighteen years of age and who are domiciled with a parent or guardian having legal custody of the individual or domiciled, with the written permission of the parent or guardian having legal custody, with a designee of the parent or guardian;

(2) Any individual who is pregnant or in the process of securing legal custody of any individual who is under eighteen years of age.

(r) "Gender expression" means external manifestations of gender, expressed through one's behavior or appearance, that may or may not be those traditionally associated with the individual's assigned sex at birth.

(s) "Gender identity" means an individual's sense of having, or being perceived as having, a gender that may or may not be traditionally associated with the individual's assigned sex at birth.

(t) "Hearing Officer" means a neutral independent contractor, hired by the City, who conducts an administrative hearing based on a complaint filed pursuant to the provisions of this chapter.

(u) "Housing accommodations" includes any building or structure, or portion of a building or structure, that is used or occupied or is intended, arranged, or designed to be used or occupied as the home residence, dwelling, dwelling unit, or sleeping place of one or more individuals, groups, or families whether or not living independently of each other; and any vacant land offered for sale or lease. "Housing accommodations" also includes any housing accommodations held or offered for sale or rent by a real estate broker, salesperson, or agent, by any other person pursuant to authorization of the owner, by the owner, or by the owner's legal representative. "Housing accommodations" does not include any housing accommodations owned or operated by a religious organization when they are owned or operated for other than a commercial purpose and offered to individuals of the same religion.

(v) "Labor organization" includes any organization that exists, in whole or in part, for the purpose of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or other mutual aid or protection in relation to employment.

(w) "Law Director" means the individual appointed by Council, pursuant to Article V Section 2 of the Westerville Charter, as "Director of Law" or the designee of such individual.

(x) "Military Status" means a current or former member of the uniformed services of the United States, including reserve components thereof, or of the national guard, excluding any former member that was dishonorably discharged or released from such service for bad conduct.

(y) "Person" includes one or more individuals, partnerships, associations, organizations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, and other organized groups of individuals. "Person" also includes, but is not limited to, any owner, lessor, assignor, builder, manager, broker, salesperson, appraiser, agent, employee, or lending institution.

(z) "Physical or mental impairment."

(1) "Physical or mental impairment" means any of the following except as provided in division (z)(2) of this section:

A. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine;

B. Any mental or psychological disorder, including, but not limited to, Intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities;

C. Diseases, blood disorders and conditions, including, but not limited to, orthopedic, visual, speech, and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, human immunodeficiency virus infection, intellectual disability, emotional illness, drug addiction, and alcoholism.

(2) "Physical or mental impairment" does not mean any of the following:

A. Pedophilia, exhibitionism, voyeurism, or other sexual behavior disorders;

B. Compulsive gambling, kleptomania, or pyromania;

C. Psychoactive substance use disorders resulting from the current illegal use of a controlled substance.

(aa) "Place of public accommodation" means any inn, restaurant, eating house, hotel, motel, bank or other financial services institution, barbershop, public conveyance by air, land, or water, theater, store, other place for the sale of merchandise, or any other place of public accommodation or amusement where the accommodations, advantages, facilities, or privileges are available to the public, provided it shall not apply to accommodations of a public education system, or an agency of government other than the City.

(bb) "Protected class" means a classification of individuals based on one or more of the following characteristics: race, color, religion, sex, national origin, age, familial status, military status, disability, pregnancy, sexual orientation, gender identity, or gender expression.

(cc) "Public use areas" means interior or exterior rooms or spaces of a privately owned building that are made available to the general public.

(dd) "Religious organization" means a not for profit church or integrated auxiliary of a church, as those terms are used by the United States Internal Revenue Service and includes any school that incorporates substantial religious teachings or religious practices of that church in that school. Religious organization does not include any hospital or medical facility that offers medical services to the general public.

(ee) "Respondent" means the person who is alleged to have committed or is alleged to be committing unlawful discriminatory act(s) or practices and who is identified in a written complaint filed by a complainant.

(ff) "Senior citizen" means an individual at least sixty years old.

(gg) "Service animal" means a dog individually trained to do work or perform tasks for the benefit of an individual with a disability and includes an "assistance dog" as provided in R.C. § 955.011. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.

(ii) "Sex" means the biological sex of either male or female assigned at the birth of each individual.

(jj) "Sexual orientation" means an individual's actual or perceived heterosexuality, homosexuality, or bisexuality.

(kk) "Source of income" means a lawful financial resource or form of assistance which the recipient appropriately discloses, and which can be verified and substantiated as derived from wages, investments, trusts, child support, spousal support, grant or loan program, and all forms of federal, state, or local assistance payments, benefits, or subsidy programs including but not limited to vouchers for rent or housing, foster child assistance, public assistance emergency rental assistance, veterans benefits, social security, supplemental security income or other retirement programs, or programs administered by any federal, state, or local government, or a nonprofit entity.

(ll) "Uniformed services" has the same meaning as in 10 U.S.C. 101.

(mm) "Unlawful discriminatory practice" means any act or practice prohibited by this chapter."

**SECTION 2:** That Section 511.05 "Complaint Procedure" of the Codified Ordinances be and hereby is amended to read as follows:

**"511.05 Complaint procedure.**

(a) Filing of the complaint.

(1) An aggrieved individual, complainant, may file with the Westerville Clerk of Council, or in Clerk's absence, the City Manager or designee, a written complaint which alleges facts and circumstances that are true to the best of complainant's knowledge, including the location, date(s), and time(s), of an unlawful discriminatory act(s) or practices, that such acts did or are occurring within the City limits, that the discrimination was directed at the complainant, and which identifies the person who committed or continues to commit the alleged unlawful discriminatory act(s) or practices.

(2) Concurrent with the filing of the complaint, the complainant shall provide to the Clerk of Council in writing the complainant's mailing address, telephone number, if any, and email address, if any.

(3) The complaint shall not be accepted by the Clerk of Council if any of the following apply:

A. The complaint is presented to the Clerk of Council more than 180 days following the most recent unlawful discriminatory act alleged in the complaint;

B. No incident location provided in the complaint is within the City of Westerville;

C. The investigation of the complaint is required to be conducted pursuant to the terms of a collective bargaining agreement to which the City is a party;

D. The complaint fails to include all the information required by division (a)(1) of this section;

E. The complainant fails to concurrently provide a writing that includes the information required in division (a)(2) of this section.

(4) Upon receiving a complaint of an alleged unlawful discriminatory act, the Clerk of Council shall immediately date stamp the complaint and shall mail by certified or registered mail, return receipt requested, certified copies of the complaint to the Commission and the respondent.

(5) Upon receiving a complaint of an alleged unlawful discriminatory act, the Clerk of Council shall immediately deliver a copy of the complaint to the City Manager and the Law Director.

(6) The Clerk of Council shall retain the original date-stamped complaint and shall open and maintain a file on the matter during the pendency of any actions related to the complaint and for so long thereafter as is necessary to comply with the City's Records Retention Schedule.

(b) Commission: contracted authority and initial actions.

(1) The City shall contract with the Commission, and the City Manager is hereby authorized to enter into and perform such contract on behalf of the City upon such terms as the City Manager deems appropriate and are agreeable to the Commission. Based on the terms of the contract, the reasonable costs of using the Commission shall be calculated, and the Hearing Officer may impose such costs on the respondent, if the Hearing Officer conducts a hearing and finds the respondent has or is committing acts or practices of unlawful discrimination, and the Hearing Officer deems the imposition of such costs appropriate.

(2) If the Commission determines the most recent of the unlawful discriminatory acts alleged in the complaint occurred more than 180 days before the date the complaint was filed with the Clerk of Council or that none of the alleged acts occurred within the City of Westerville, or if the complainant voluntarily dismisses or withdraws the complaint at any time before a recommendation is provided by the Commission, the Commission shall have no authority to investigate or take further actions except to return the complaint to the Clerk of Council with written notice to the Clerk of Council and the Law Director that the complaint is outside of the authority granted to the Commission.

(3) Except as otherwise provided in this section, the Commission, acting as an administrative body of the City, shall be authorized to investigate, mediate, and make recommendations.

(4) If the Commission accepts the complaint, it shall follow such rules and procedures as the Commission deems appropriate, and at the conclusion of its process, the Commission shall issue a written recommendation to the Law Director with a copy to the Clerk of Council. The recommendation shall be to either:

- A. Dismiss the complaint; or
- B. Forward the complaint to a Hearing Officer.

(5) Within thirty days following the Law Director's receipt of the recommendation of the Commission, regardless of the specific recommendation, the Law Director shall either:

- A. Seek to appoint a Hearing Officer who shall conduct an administrative hearing; or
- B. Issue a notice of dismissal by ordinary United States mail on the respondent and the complainant, with a copy to the Clerk of Council. The documents shall be deemed received and properly served upon the respondent and the complainant five days following the mailing thereof. The notice of dismissal may be appealed pursuant to the provisions of R.C. Chapter 2506.

(c) Hearing Officer, final decision, remedies, and appeal.

(1) If a Hearing Officer is appointed, the Hearing Officer shall have the authority to:

- A. Conduct an administrative hearing;
- B. Provide to all the parties, witnesses, and the Law Director timely notice of the hearing date, time, and location;
- C. Set, change as necessary, and timely communicate to the parties such reasonable procedural rules as the Hearing Officer shall deem appropriate;
- D. Issue subpoenas and direct the exchange of discovery.

(2) At the conclusion of the administrative hearing the Hearing Officer shall issue to the parties and the Law Director a final written decision to include findings of fact and conclusions of law:

- A. If the Hearing Officer finds the respondent did engage in, or continues to engage in, an unlawful discriminatory act or practice under this chapter, and the Hearing Officer, in the Hearing Officer's sole discretion, deems it appropriate, the Hearing Officer's final written decision may include the issuance to the respondent of orders to cease and desist and the imposition

upon the respondent of such other sanctions as are provided in this chapter;  
or

B. If the Hearing Officer, in the Hearing Officer's sole discretion, deems it appropriate, the Hearing Officer's final written decision may include the issuance of a notice of dismissal.

(3) If the final decision of the Hearing Officer includes the issuance to the respondent of orders to cease and desist the unlawful discriminatory acts or practices, such orders to cease and desist shall specify a time period for the respondent's compliance.

(4) The final decision of the Hearing Officer may include the imposition upon the respondent of reasonable costs of the Commission's process. The cost of the Hearing Officer's services shall not be assessed against the respondent. Attorney fees shall not be assessed against the respondent. Damages and other expenses incurred by the complainant or any other party shall not be assessed against the respondent.

(5) The final decision of the Hearing Officer may include the imposition upon the respondent of a civil penalty payable to the City as follows:

A. If division (c)(5)B. or (c)(5)C. of this section does not apply, a civil penalty in an amount not to exceed one thousand dollars (\$1,000);

B. If division (c)(5)C. of this section does not apply and if the respondent has been found by the Hearing Officer to have committed one violation of this chapter during the five-year period immediately preceding the date on which a complaint was filed with the Clerk of Council, a civil penalty in an amount not to exceed two thousand five hundred dollars (\$2,500);

C. If the respondent has been found by the Hearing Officer to have committed two or more violations of this chapter during the five-year period immediately preceding the date on which a complaint was filed with the Clerk of Council, a civil penalty in an amount not to exceed five thousand dollars (\$5,000).

(6) The final decision of the Hearing Officer may not include any orders for reinstatement of employment, refund of monies paid, other mitigation of damages, or any other orders for corrections or sanctions, except as provided in this section.

(7) The final decision of the Hearing Officer may be appealed pursuant to the provisions of R.C. Chapter 2506.

(d) The final decision issued by the Hearing Officer shall be in a writing served by ordinary United States mail on the respondent and the complainant. The documents shall be deemed received and properly served upon the respondent five days following the mailing thereof. Copies of the final decision shall also be sent to the Clerk of Council and the Law Director.

(e) City of Westerville as respondent.

(1) If the Hearing Officer finds a violation occurred, and the respondent is the City of Westerville or one of its boards, commissions, departments, divisions, officials, or



employees, the Hearing Officer shall issue to the Westerville Clerk of Council a notice of violation, without any orders and without specifying any sanction, and the Hearing Officer shall take no further action.

(2) If the Hearing Officer issues a notice of violation on the Westerville Clerk of Council, at a reasonable time following receipt of the notice of violation, the Westerville City Council shall, at an open public meeting of City Council, take such actions and impose such remedies as City Council deems appropriate, including delegating such authority to the City Manager.”

**SECTION 3:** That Section 509.07 “Ethnic Intimidation” of the Codified Ordinances be and hereby is amended to read as follows:

**“509.07 Ethnic Intimidation**

(a) No person shall violate Ohio R.C. 2903.21, 2903.22, 2909.06, 2909.07 or 2917.21(A)(3) to (5) or Sections 503.06, 503.07, 503.13(a)(3) to (5), 509.02 or 509.03 of the General Offenses Code by reason of the race, color, religion, sex, national origin, age, familial status, military status, disability, pregnancy, sexual orientation, gender identity, or gender expression of another person or group of persons.

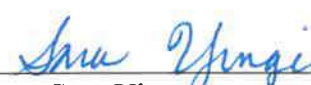
(b) Whoever violates this section is guilty of ethnic intimidation. Ethnic intimidation is an offense of the next higher degree than the offense the commission of which is a necessary element of ethnic intimidation.”

**SECTION 4:** That this Ordinance shall take effect and be in force from and after the earliest date allowed by law.

PASSED: March 19, 2024

  
Michael Heyeck  
Chair of Council

APPROVED:   
Andrew J. Winkel  
Director of Law

  
Sara Yinger  
Deputy Clerk of Council